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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY:

California Community Colleges Chancellor's Office

A written comment period has been established commencing on **June 17, 2005** and closing on **August 1, 2005**. Written comments should be directed to the Fair Political Practices Commission, Attention **Trish Mayer**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director or the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written

comments must be received no later than **August 1, 2005**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Trish Mayer**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Trish Mayer**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the amended conflict of interest codes of the following agencies:

CONFLICT OF INTEREST CODE

AMENDMENTS

STATE AGENCY:

Department of Toxic Substances Control

A written comment period has been established commencing on **June 17, 2005**, and closing on **August 1, 2005**. Written comments should be directed to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or her own motion or at the interest of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than August 1, 2005. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the

codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code shall approve codes as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 2, CALIFORNIA CODE OF REGULATIONS, AMENDMENTS TO SECTION 54700: OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT— CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 2, California Code of Regulations, Section 54700 to reflect changes in positions and updating of disclosure categories in the Conflict of Interest Code for OEHHA.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OEHHA. The

written comment period closes at 5:00 p.m. on **August 12, 2005**. OEHHA will only consider comments received at the OEHHA's headquarters by that time. Please submit your written comments to the contact person designated below.

Carol J. Monahan
Legal Office
Office of Environmental
Health Hazard Assessment
1001 "I" Street
P.O. Box 4010
Sacramento, CA 95812
Phone: (916) 322-0493
Fax: (916) 324-1786
E-mail: cmonahan@oehha.ca.gov

In the case Carol J. Monahan is unavailable, please contact:

Kimberly Russell
Staff Service Analyst
Office of Environmental
Health Hazard Assessment
1001 "I" Street
Sacramento, CA 95812
Phone: (916) 445-9376
Fax: (916) 327-7355
E-mail: krussell@oehha.ca.gov

PUBLIC HEARING

A public hearing has not been scheduled. However, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code § 11346.8. Please address all requests to OEHHA's contact person as designated in this Notice.

INFORMATIVE DIGEST

This regulation implements Government Code sections 87300–87302, and 87306. Every governmental agency is required to adopt a conflict of interest code, which designates the positions within the agency, which make or participate in the making of decisions, which may foreseeably affect any financial interest. Conflict of interest codes require the disclosure of those interests by persons filling positions designated in the Code (Government Code section 87300 and 87302). Conflict of interest codes must be amended through the regulatory process when organizational changes occur necessitating changes in the code (Government Code section 87306).

The OEHHA Conflict of Interest Code is proposed to be amended as follows:

Changes to Designated Positions

Since the Conflict of Interest Code was adopted in 1992, several positions have been added, removed, or

renamed in OEHHA's organizational chart. These changes are reflected in the amended Code.

Changes to Disclosure Categories

A third disclosure category has been included for committee members. Existing categories' disclosure terms have been modified for clarity and consistency with existing law.

FISCAL IMPACT

Fiscal Impact on Local Government. This amendment will have no fiscal impact on any local entity or program, because it only applies to OEHHA employees, contractors, and committee members.

Fiscal Impact on State Government. This amendment will have no fiscal impact on any state agency or program, because it is simply a minor amendment of an existing regulation.

Fiscal Impact on Federal Funding of State Programs. No fiscal impact exists because this proposed regulation does not effect the federal funding of any state program or agency.

The proposed amendments of the Code will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by the office, or that has otherwise been identified and brought to the attention of the office would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA will have the entire rulemaking file, and all information upon which the proposed amendments are based, available for inspection and copying throughout the rulemaking process at the below address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed

text of the regulations, and OEHHA's most recent organizational chart. Copies may be obtained by contacting the person below:

Carol J. Monahan
Legal Office
Office of Environmental
Health Hazard Assessment
1001 "I" Street
P.O. Box 4010
Sacramento, CA 95812
Phone: (916) 322-0493
Fax: (916) 324-1786
E-mail: cmonahan@oehha.ca.gov

AVAILABILITY OF CHANGED OR MODIFIED TEXT

OEHHA may amend the regulations as described in this notice. If OEHHA makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before OEHHA amends the regulation as revised. Requests for the modified text should be made to the contact person named below. OEHHA will mail any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. OEHHA will accept written comments on the modified regulations, if any, for 15 days after the date on which they are made available.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Carol J. Monahan
Legal Office
Office of Environmental
Health Hazard Assessment
1001 "I" Street
P.O. Box 4010
Sacramento, CA 95812
Phone: (916) 322-0493
Fax: (916) 324-1786
E-mail: cmonahan@oehha.ca.gov

In the case Carol J. Monahan is unavailable, please contact:

Kimberly Russell
Staff Service Analyst
Office of Environmental
Health Hazard Assessment
1001 "I" Street
Sacramento, CA 95812

Phone: (916) 445-9376
Fax: (916) 327-7355
E-mail: krussell@oehha.ca.gov

AUTHORITY AND REFERENCE

Authority: Government Code section 87306.

Reference: The purpose of these regulations is to implement, interpret and make specific Government Code sections 87300–87302 and 87306. This document is drafted pursuant to Title 2, Division 6, California Code of Regulations section 18750(c)(3).

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Dormant Insecticide Contamination Prevention
DPR Regulation No. 05-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6960 and amend section 6000 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to the use of dormant spray insecticides and focuses on mitigating surface water contamination.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on August 1, 2005. Comments regarding this proposed action may also be transmitted via e-mail to <dpr05004@cdpr.ca.gov>, or by facsimile at (916) 324-4088.

A public hearing is not scheduled; however, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pesticide applications to orchard crops during winter—when the trees are dormant—kills diseases and over-wintering arthropod pests (such as scales and mites). Treatment is most effective during this time of the year because there are no leaves on the trees to interfere with the pesticide application. While dormant season applications help to keep destructive pests

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

under control throughout the growing season, the organophosphate (OP) pesticides used as dormant sprays (such as diazinon, methidathion, and chlorpyrifos) can cause problems when pesticide drift occurs during an application, or when rain washes residues into the Central Valley rivers and streams.

DPR scientists analyzed data from surface water studies conducted between 1991 and 2001 and found that dormant spray insecticides were frequently detected in the watersheds of the Sacramento and San Joaquin rivers, particularly in tributaries. The dormant spray pesticide diazinon yielded the highest detections; these detections coincided with the flooding of orchards during winter rains. Small aquatic test invertebrates were killed when exposed for even short periods to the OP levels detected in the two watersheds.

Because state and federal laws prohibit the discharge of substances that make rivers toxic to aquatic life, the detections led the Central Valley Regional Water Quality Control Board to declare this problem a violation of its Basin Plan water quality standard for toxicity. In 1998, the State placed the Sacramento and San Joaquin Rivers and the associated Delta/Estuary on the Clean Water Act 303(d) list of impaired waterways, partly because of elevated OP levels originating from dormant spray runoff or drift. These listings require that specific measures be taken to eliminate harmful residues in the watersheds.

Under a 1996 settlement agreement between the Sacramento Valley Toxics Campaign (SVTC) and the State and Central Valley Water Resources Control Boards, DPR agreed to resolve water quality problems caused by dormant sprays. Rather than immediately adopt mandatory restrictions, DPR launched a five-year plan during which DPR worked with growers to determine if voluntary practices could be developed that would effectively reduce the movement of dormant spray pesticides to surface waters.

Under the SVTC settlement agreement, DPR agreed to initiate regulatory measures if water quality improvements were not made. Monitoring performed between 1991 and 2001 revealed little progress in reducing aquatic toxicity and voluntary measures were deemed insufficient to resolve water quality problems. In fact, recent winter dormant season monitoring (1997–2000) revealed significant toxicity of aquatic test invertebrates in water samples taken from tributaries to both the Sacramento and San Joaquin Rivers.

This proposed action would adopt dormant spray contamination prevention regulations focusing on mitigating surface water contamination. Language pertaining to dormant spray contamination prevention will be added to 3 CCR in an effort to eliminate, or limit to the extent possible, direct primary drift of

dormant spray insecticides into water bodies. The definitions “dormant oil,” “dormant insecticide,” “hydrologically isolated site,” and “sensitive aquatic site” will be added to section 6000 to clarify the new language.

The proposed addition of section 6960 would restrict ground and aerial applications of dormant insecticides to areas 100 feet from any irrigation or drainage ditch, canal, or other body of water in which the presence of dormant insecticides could adversely impact any of the beneficial uses of the waters of the state specified in Water Code section 13050(f). This measure is intended to reduce problems caused by both runoff and drift. (While a 100-foot buffer will not eliminate all contamination from drift, this distance will provide a reasonable reduction in problems caused by drift.) Provisions for periods/circumstances under which dormant insecticides may or may not be applied are included in the proposed regulations. Specific wind speeds and weather conditions that may impact dormant insecticide applications are also covered in detail.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

County agricultural commissioner (CAC) offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR negotiates an annual work plan with the CACs for enforcement activities.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has determined that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states; however, there will be additional economic impacts beyond that already incurred by businesses.

While the crop management changes anticipated by the proposed regulation are not expected to result in noticeable shifts in crop selection, some growers—or property operators—may see minor increases in operating costs. The requirement for the property operator to obtain a written recommendation from a licensed pest control adviser prior to dormant insecticide application will increase the property operator's costs if they do not already retain this service. In addition, some property operators—specifically growers with smaller fields adjacent to sensitive aquatic sites—may find their operation's production capability adversely impacted if they cannot provide the required 100-foot buffer zone, or if meeting the buffer zone requirement means a portion of their orchard or field cannot be treated.

The new regulation's impact on application frequency could negatively impact costs to the grower in terms of crop loss and/or the need to purchase more expensive or greater quantities of pesticides annually. For instance, because the window of opportunity for dormant insecticide applications may be limited by the need to meet wind speed and weather condition requirements, a grower may need to compensate for "missed" applications by making more pesticide applications later in the season, possibly at greater expense. Or, in some cases, important applications may be skipped because application conditions are not appropriate, thus enabling pests to cause damage.

The proposed regulation should not have a significant impact on the ability of California businesses to compete with businesses in other states, since the growers potentially affected have alternative approaches to crop management available to them. Any increase in costs will be minor relative to normal market fluctuations. In fact, this may have less significance for growers who have an integrated pest management strategy.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

The regulation may, however, increase the demand for evaluations by pest control operators since property operators will now be required to obtain the written recommendation of a licensed pest control adviser prior to making a dormant insecticide application. Thus, there may be an increase in the number of recommendations written by pest control operators; however, this probably will not lead to growth in employment since many pest control operators already work under contract with growers or chemical companies to provide advice for a specific farm.

Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on growers. Pesticide dealers currently selling dormant insecticides may experience some decrease in sales that might be offset by increased sales of alternative substituted chemicals.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 11052, 12111, 12781, 12976, 12981, 13145, 14001, and 14005.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 11401.2, 11408, 11410, 11501, 11701, 11702(b), 11704, 11708(a), 12042(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146, and 14006.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulation, and inquiries regarding the rulemaking file may be directed to:

Cheryl Langley, Senior Environmental
Research Scientist
Department of Pesticide Regulation
Environmental Monitoring Branch
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-4273

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani,
Regulations Coordinator
Office of Legislation and Regulations
(916) 445-3991

Questions on the substance of the proposed regulatory action may be directed to:

John S. Sanders, Ph.D., Chief
Environmental Monitoring Branch
Department of Pesticide Regulation
(916) 324-4100

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Changes to Efficacy Data Requirements for Pesticide Products DPR Regulation No. 05-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6186, 6200, and 6222 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to efficacy data requirements for pesticide products.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on August 1, 2005. Comments regarding this proposed action may also be submitted via e-mail <dpr05002@cdpr.ca.gov>, or by facsimile (FAX) transmission at (916) 324-5872.

A public hearing is not scheduled; however, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action may affect certain types of small businesses.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Food and Agricultural Code (FAC) section 12753 defines a "pesticide" as: (1) any spray adjuvant; and (2) any substance, or mixture of substances, that is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in FAC section 12754.5, that may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment. FAC section 11501 requires DPR "to assure users that pesticides are properly labeled and are appropriate for the use designated by the label." FAC section 12824 requires DPR to endeavor to eliminate from use in California any pesticide not beneficial for the purposes for which it is sold. FAC section 12825 authorizes DPR to cancel the registration of any pesticide "that is of little or no value for the purpose for which it is intended."

Currently, an applicant for registration of a new pesticide product or amendment to the labeling of a currently registered pesticide product is required by 3 CCR section 6186 to submit efficacy data supporting each efficacy claim on the product label. DPR reviews the efficacy data prior to registration of the pesticide product or accepting the amended label.

DPR first opened the subject of efficacy data requirements for pesticide products to the public for comment in 1996. DPR held workshops throughout the State and received a number of written comments. In 1997, based upon the comments received at the workshops, DPR proposed amendments to sections 6186, 6200, and 6222. DPR received numerous comments in response to the proposed regulation change. In response to comments opposing the regulatory changes, DPR withdrew its proposal.

As a part of a pesticide product registration reform initiative, DPR is once again opening up the subject of efficacy data requirements for pesticide products in the form of a proposed regulatory change for public comment.

The U.S. Environmental Protection Agency (U.S. EPA) requires that each registrant ensure through testing that a pesticide product will be efficacious when used in accordance with label directions and commonly accepted pest control practices. However, U.S. EPA only requires the submission of efficacy data to support the registration or amendment of pesticide products that bear claims to control pest organisms that pose a threat to human health. Such pests include: (a) microorganisms which are infectious to man in any area of the inanimate environment, (b) vertebrates (e.g., rodents, birds, bats, dogs, and skunks) that may directly or indirectly transmit diseases to or injure humans, and (c) insects that carry human diseases

(e.g., mosquitoes, ticks, etc.). On a case-by-case basis, U.S. EPA may require the submission of efficacy data to substantiate other types of efficacy claims. Current efficacy data submission requirements in California exceed those of the U.S. EPA and any other state.

DPR proposes to amend sections 3 CCR sections 6186, 6200, and 6222. Proposed section 6186 requires an applicant for registration of a new pesticide product or an amendment to the labeling of a currently registered pesticide product to submit efficacy data only for efficacy claims that are determined by the Director to be significantly different (as defined by the regulation) from one or more currently registered pesticide product labels. The proposed regulation change would also authorize the Director, at any time, to require the submission of efficacy data for any label claim on a registered pesticide product or a product proposed for registration.

In order to fully implement the changes in efficacy data requirements, DPR needs to make corresponding amendments to sections 6200 and 6222. Section 6200 authorizes DPR to grant conditional registrations as long as "preliminary efficacy data indicating the product is effective for the proposed use" have been submitted. The proposed amendment to section 6200 clarifies that if an applicant is not required to submit efficacy data pursuant to section 6186 for one or more efficacy claims, then preliminary efficacy data are not required for those label claim(s) to obtain a conditional registration. The proposed amendment to section 6222 clarifies that under the reevaluation process, DPR retains its authority to require the submission of efficacy data on any pesticide product.

IMPACT ON LOCAL AGENCIES
OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

DPR anticipates that there will be no fiscal impact to these agencies because the proposed regulatory action makes no change to any existing regulations that are enforced by any local agency.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no net savings or increased costs to DPR will result from the proposed regulatory action. The proposed regulatory change

may reduce DPR's workload in the area of efficacy data review; however, due to personnel cuts and DPR's backlog of registration applications, any savings from the proposed regulatory change will be put towards reducing the backlog and speeding up the pesticide registration process. No positions will be eliminated. DPR has determined that no increased costs or savings to any other state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation may result in a cost savings to private persons or businesses that register pesticide products for sale in California; however, the cost savings is not likely to be significant. U.S. EPA requires all applicants to conduct efficacy studies; therefore, the savings to the regulated community would be the cost of submitting the studies to DPR for review. The proposed regulatory action may result in a cost impact to private persons or businesses that conduct efficacy studies for pesticide companies. These companies may experience a loss of business for efficacy studies to be conducted in California. The agency is not aware of any cost impacts to other representative private persons or business from the proposed regulatory action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456 and 12781.

REFERENCE

This regulatory action implements, interprets, or makes specific Food and Agricultural Code sections 11501, 12824, 12825, 12825.5, 12826, 12827, and 12854.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulations may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulations permanent if they remain substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments only on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons; the proposed text of the regulation; and a

public hearing; inquiries regarding the rulemaking file; or questions on the substance of the proposed regulatory action may be directed to:

Ann Prichard, Sr. Environmental Research Scientist
Department of Pesticide Regulation
Pesticide Registration Branch
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-3931

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as above.

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
(916) 445-3991

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 4. CALIFORNIA EDUCATIONAL FACILITIES AUTHORITY

NOTICE OF PROPOSED ADOPTION OF REGULATIONS

Sections 9020 through 9070 Title 4, Division 12
California Code of Regulations

NOTICE IS HEREBY GIVEN that the California Educational Facilities Authority (the "Authority"), organized and operating pursuant to Sections 94100 to 94216.11, inclusive, of the California Education Code (the "Act"), proposes to adopt regulations to amend and renumber Sections 9020, 9030, 9031, 9032, 9041, and 9043 of, and to add Chapter 2 (commencing with Section 9050) to Division 12 (commencing with Section 9001) of Title 4 of the California Code of Regulations in order to implement the Academic Assistance Program authorized pursuant to Section 94140 of, and Article 9 (commencing with Section 94215) of Chapter 2 of, Part 59 of the Education Code and to make corresponding and technical, conforming changes to the existing regulations.

PUBLIC HEARING

No public hearing regarding this proposed action has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least 15 days before the end of the Public Comment period. Such request should be addressed to the Authority Contact Person identified in this Notice and should specify the Academic Assistance Program Regulations for which the hearing is being requested.

AUTHORITY AND REFERENCE

These Regulations implement, interpret and make specific Article 9 (commencing with Section 94215) of Chapter 2 of Part 59 of the California Education Code (hereafter, Article 9). The Authority has authority to adopt these Regulations as permanent regulations pursuant to both of the following sections:

1. Section 94140(a) of the Education Code, which provides the Authority to "[a]dopt bylaws for the regulation of its affairs and the conduct of its business"
2. Section 94215.7(a) of the California Education Code provides that "the authority in consultation with representatives of private colleges, qualified schools, and other appropriate parties, shall develop selection criteria and a process for awarding grants under this article [Article 9] . . .".

The adoption of these Regulations as permanent regulations is necessary to carry out the express power of the Authority to award grants under Article 9.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law authorizes the Authority to award grants to eligible private colleges to provide a program of academic assistance and services to pupils attending a qualified school, as defined in Section 94215.9 of the Act, in order to inform the pupils of the benefits of, and the requirements for, higher education; prepare these pupils for college entrance; or to provide programs, such as academic enrichment and mentoring programs, that advance the academic standing of those pupils. Existing law requires the Authority to develop selection criteria and a process for awarding grants that take into account at least certain factors when selecting recipients and determining grant amounts.

- These regulations would establish selection criteria and a process for awarding grants. More specifically:

California Code of Regulations ("CCR") Section 9050 would interpret and clarify terms used in Sections 94215 and 94216 of the Act.

- CCR section 9051 makes specific the eligibility criteria for Private Colleges required pursuant to Section 94215.7 of the Act. The provisions authorize the Authority to require Private Colleges to be eligible under the California Educational Facilities Financing Act, to have academic accreditation, to not have “going concern” language in its most recent audited financial statements, to have submitted an Application Form in accordance with the Regulations, and to propose an eligible program.
- CCR section 9052 makes specific which programs may be funded.
- CCR 9053 implements and makes specific Section 94215.7 of the Act by authorizing the Authority to grant maximum awards of \$250,000 to qualified schools for eligible programs that do not exceed the dollar amount of the grant award.
- CCR 9054 establishes that all eligible private colleges interested in applying for a grant must complete an application.
- CCR 9055 specifies the time and manner of submitting an application to the Authority.
- CCR 9056 details the information required to be submitted in an application for a grant including financial information, organization information, legal information, information and certification regarding religion, an agreement and certification and a grant agreement.
- CCR 9057 details the manner in which applications will be reviewed, scored and ranked by staff.
- CCR 9058 details the criteria that will be used in evaluating applications including program effectiveness and commitment to success of the program, and program feasibility.
- CCR 9059 provides for notifying applicants of their scores and the proposed amount of initial allocation, establishes a minimum score required for funding, and allows for incremental grant disbursements.
- CCR 9060 establishes an appeals process for applicants including the circumstances under which an appeal may be filed, the timing of the appeal, and the review of the appeal by the staff and Authority.
- CCR 9061 provides for approval by the Authority of proposed grant awards and notification of approval to recipients.
- CCR 9062 specifies when the Authority, at its discretion, can award grants, in the event there are remaining grant funds after the first funding round.
- CCR 9063 specifies when the Authority or the Authority staff may have the discretion to consider a change in use of the grant funds.
- CCR 9064 specifies the terms and conditions that must be included in the agreement to be executed by the grantee.

- CCR 9065 specifies the information that must be provided to satisfy this requirement including verification that all other funds, if needed are in place, receipt of an executed grant agreement, and documentation that all conditions of funding have been satisfied.
- CCR 9066 specifies the documentation and time-frame for the expenditure of grant funds and requires the return of funds to the extent that matching funds were not received.
- CCR 9067 specifies that allocated grant funds that are returned for any reason are to be distributed to the next highest scoring applicant not receiving a grant allocation or if no such applicant exists or the applicant’s project has been abandoned, then distribution will be made at the Authority’s discretion in a manner consistent with the goals and spirit of the Act and this Chapter.
- CCR 9068 interprets and makes specific Section 94215.7(d) of the Act by requiring recipients to retain all program and financial data and to provide audited information to the Authority upon request.
- CCR Section 9069 clarifies the basis of a determination to require a recovery of grant funds for the grantee’s failure to implement the program according to specified award terms.
- CCR 9070 makes specific the requirements of Section 94216 of the Act.

**OTHER MATTERS PRESCRIBED BY STATUTES
APPLICABLE TO THE SPECIFIC STATE
AGENCY OR TO ANY SPECIFIC REGULATION
OR CLASS OF REGULATIONS**

No other matters are prescribed by statute applicable to the Authority or to any specific regulation or class of regulation pursuant to 11346.5(a)(4) of the Government Code pertaining to the proposed regulations or to the Authority.

**MANDATE ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

The Executive Director of the Authority has determined that the proposed Regulations do not impose a mandate on local agencies or school districts.

FISCAL IMPACT

The Executive Director of the Authority has determined that the regulations do not impose any additional cost or savings requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the California Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a

Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600–6670. There will be no cost or savings to any State Agency pursuant to Government Code Section 11346.1(b) or 11346.5(a)(6).

ALTERNATIVES

The Authority must determine that no reasonable alternative to the proposed regulations considered by the Authority or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the regulations.

The Authority invites interested persons to present statements with respect to alternatives to the Regulations during the written comment period.

PLAIN ENGLISH REQUIREMENTS

See the Informative Digest above for a plain English discussion of the broad and specific objectives of the proposed Regulations.

The express terms of the proposed Regulations written in plain English are available from the agency contact person named in this Notice.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON CALIFORNIA BUSINESSES AND DIRECTLY AFFECTED PRIVATE PERSONS AND BUSINESSES

The Academic Assistance Program Regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. In fact, adoption of the Academic Assistance Program Regulations should result in grants to businesses eligible for participation in the Academic Assistance Program. The Academic Assistance Program will provide a funding source for a business interested in providing academic assistance and services to low- or very low-income students.

ASSESSMENT OF EFFECT ON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The adopted Academic Assistance Program Regulations will have a positive effect on jobs and new and existing businesses within the State of California by furthering the educational achievements of its residents. The adopted Academic Assistance Program Regulations will help the Authority to give financing assistance to more businesses in this state.

COST IMPACT ON HOUSING

The adopted Academic Assistance Program Regulations will not have any effect on housing.

REPORT REQUIREMENT

Under Section 9070 of the Regulations, an Applicant shall report to the Authority how funds were expended in each fiscal year that grant funds were disbursed, including a statement of sources and uses of funds for the Program. A final report on the status of the Program will be required at the end of the fiscal year following the final year that grant funds were expended. These reports by educational institutions are required to ensure the welfare of the people of the state of California by providing information that grant proceeds were expended according to the terms of approval.

AUTHORITY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the Academic Assistance Program Regulations shall be submitted or directed to:

Barry Scarff, Program Officer
California Educational Facilities Authority
915 Capitol Mall, Room 590
Sacramento, California 95814
Telephone: (916) 654-5711
Fax: (916) 654-5362
Email: bscarff@treasurer.ca.gov

The following person is designated as a backup contact person for inquiries only regarding the Academic Assistance Program Regulations:

Kristine Scully, Analyst
California Educational Facilities Authority
Telephone: (916) 653-3213

PUBLIC COMMENT PERIOD

The public comment period on the proposed regulatory action as described in this Notice will end on **August 1, 2005**. All comments must be submitted in writing to the Authority Contact Person by that time in order for them to be considered by the Authority.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED ACADEMIC ASSISTANCE PROGRAM REGULATIONS

Pursuant to California Government Code section 11346.5(a)(16), the Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 590, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Academic Assistance Program Regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice. This

address will also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. The Notice and proposed regulations will also be available on **June 17, 2005** on the State Treasurer's Office web site at <http://www.treasurer.ca.gov>.

After preparation of the Final Statement of Reasons, it will be made available at the above described address and website.

15-DAY AVAILABILITY OF CHANGES

After the public comment period ends and following a public hearing, if any is requested, the Authority may adopt the proposed regulatory action substantially as described in this Notice, without further notice, or may do so with modifications which are sufficiently related to the originally proposed text.

As required by Title 1, Chapter 1, Section 44, of the California Code of Regulations, the full text of any proposed Regulation that is changed or modified from the express language of originally proposed text, except nonsubstantial or solely grammatical changes, will be made available to the public with the change clearly indicated for at least fifteen (15) calendar days before the Authority adopts the proposed Academic Assistance Program regulations, as modified. All changes shall be noted using a uniform method which shall illustrate accurately all changes to the original text. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Authority Contact Person identified above in this Notice.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

NOTICE OF RULEMAKING AFTER EMERGENCY ADOPTION AND INFORMATIVE DIGEST

Official Medical Fee Schedule—Physician Fees

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code Sections 133, 4062, and 5307.3, has revised regulations on an emergency basis to implement the provisions of Labor Code section 5307.1 (Statutes of 2003, Chapter 639).

The revised regulation, Section 9789.11 of Article 5.3 of Chapter 4.5, Subchapter 1, of Title 8 of the California Code of Regulations, adopts Table A effective January 14, 2005 to set forth fees for physician services in the Official Medical Fee Schedule (OMFS).

The emergency regulation became effective on January 14, 2005, and was readopted with changes effective May 14, 2005. Together with the emergency readoption the Administrative Director adopted a new Table A for services rendered on or after May 14, 2005. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: August 1, 2005

Time: 10:00 a.m.

Place: Auditorium
The Governor Hiram Johnson
State Office Building
455 Golden Gate Avenue
San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication and program access for persons with disabilities, are available upon request. Please contact the State-wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code Sections 59, 127, 133, 4603.5, 5307.1, and 5307.3.

Reference is to Labor Code Sections 4600, 4603.2, 4620, 4521, 4622, 4625, 4628, 5307.1, and 5402.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Labor Code Section 5307.1, as amended by Senate Bill 228 of 2003 (Chapter 639, Statutes of 2003, effective January 1, 2004), requires the Administrative Director to adopt and revise periodically an official medical fee schedule that establishes the reasonable maximum fees paid for all medical services rendered in workers' compensation cases. Except for physician services, all fees in the adopted schedule must be in accordance with the fee-related structure and rules of the relevant Medicare (administered by the Center for Medicare & Medicaid Services of the United States Department of Health and Human Services) and Medi-Cal payment systems.

For the Calendar Years 2004 and 2005, the maximum reimbursable fees for physician services are to be the fees set forth in the Official Medical Fee Schedule in effect on 12/31/2003, but reduced by five (5) percent. The Administrative Director has the discretion to reduce individual medical procedures (reflected in the Fee Schedule by separate CPT codes) by amounts different than five percent, but in no event shall a procedure be reduced to an amount that is less than that paid by the Medicare payment system for the same procedure.

The Administrative Director adopted regulation section 9789.11, and the incorporated Table A (setting forth maximum fees for physician services), effective January 2, 2004. A revised Table A was adopted effective July 1, 2004. Subsequently, it has been discovered that some of the fees in the Table A were not set according to the intentions of the Administrative Director, and there were some typographical and arithmetical errors. In addition, the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services (CMS) has revised some of the Medicare physician fees effective January 1, 2005, which results in some of the OMFS fees falling below Medicare. Therefore, the Administrative Director is now adopting revisions to Table A effective for services on or after January 14, 2005 to correct errors and adopting a new Table A effective for services on or after May 14, 2005 to take into account the Medicare rate revisions.

The Administrative Director determined that the emergency adoption of proposed regulations was necessary for the immediate preservation of the public peace, health and safety or general welfare. The following described regulation was adopted as an emergency regulation, effective January 14, 2005, including a Table A effective January 14, 2005, and readopted as an emergency regulation with changes effective May 14, 2005. In addition, the emergency regulation adopted a new Table A effective for services on or after May 14, 2005. This rulemaking would

make the regulation permanent. This proposed regulatory change implements, interprets, and makes specific Section 5307.1 of the Labor Code as follows:

Section 9789.11 Physician Services Rendered on or after July 1, 2004.

This section sets forth the formula for determining the maximum reimbursable fees for physician services rendered after January 1, 2004. Amended Labor Code section 5307.1(k) requires that such fees, set forth in the Official Medical Fee Schedule 2003, be reduced by 5%. However, the Administrative Director has the discretion to adjust individual procedure codes by different amounts, provided that no resulting fee drops below the Medicare rate for the same procedure.

- (a) This subdivision provides that, except for the "General Information and Instructions" section, the ground rules set forth in the Official Medical Fee Schedule 2003 are applicable to physician services rendered after July 1, 2004. A "General Information and Instructions" section is incorporated by reference. A change is made in the web link where the General Information and Instructions may be found.
- (b) This subdivision establishes that for physician services rendered after July 1, 2004, the maximum reimbursable fees for each procedure set forth in the Official Medical Fee Schedule 2003 shall be reduced up to 5%, except that any procedure code in the OMFS 2003 that is reimbursed at a rate greater than 100% of the Medicare rate (adopted for Calendar Year 2004) will be reduced up to 5% so that reimbursement will not fall below the Medicare rate.
- (c) For the convenience of the regulated public, this subdivision consists of a table, "Table A—OMFS Physician Services Fees," incorporated by reference, setting forth each individual procedure code, its corresponding relative value, conversion factor, assigned percent reduction calculation (between 0 and 5.0%), and maximum reimbursable fee.

This amendment renumbers this subdivision as four subparagraphs. Subparagraph (1) incorporates by reference "Table A—OMFS Physician Services Fees for Services Rendered after July 1, 2004." Subparagraph (2) incorporates by reference "Table A—OMFS Physician Services Fees for Services Rendered after January 14, 2005." Subparagraph (3) incorporates by reference "Table A—OMFS Physician Services Fees for Services Rendered after May 14, 2005." Subparagraph (4) tells how the Tables A may be obtained from the Administrative Director or found on the internet.

- (d) This subdivision sets forth the formulas for determining the 5% reduction in maximum reimbursable fees for physician and anesthesia serv-

ices. For physician services, the relative value unit for each procedure code is multiplied by the applicable conversion factor, which is then multiplied by the assigned percent reduction calculation (between 0 and 5%) to produce the maximum reimbursement fee before the application of the OMFS 2003 ground rules. For anesthesia services, the base unit for each procedure is added to a modifying unit (if any) and time value, and then multiplied by the conversion factor $\times 95\%$.

- (e) This subdivision provides that except for listed exceptions, pathology and laboratory services will be reimbursed under Section 9789.50.

**Changes in Table A effective January 14, 2005.
Section 9789.11**

Table A, which is incorporated by reference, contains maximum reasonable fees for several thousand medical procedures. The Table A which was adopted as an emergency regulation, and which is made permanent in this rulemaking action, for services on or after January 14, 2005, revised and corrected fees for 286 of these medical procedures. This new Table A is different from the Table A effective July 1, 2004 as described below. However, the changes are not retroactive and thus a new Table A is adopted.

The fees for three procedure codes in the Surgery section are revised, effective January 14, 2005, to include the 5% reduction which was inadvertently omitted:

62278, 62289, and 64443.

For the following twenty-four Physical Medicine procedure codes, the 5% reduction was eliminated, effective January 14, 2005, because it was determined that this reduction would reduce the reimbursement below the level of Medicare:

97012	97022	97112	97612	97631
97014	97024	97116	97614	97650
97016	97026	97250	97616	97721
97018	97028	97520	97618	97752
97020	97110	97530	97620	

For the following three Medicine procedure codes, the 5% reduction was eliminated, effective January 14, 2005, because it was determined that this reduction would reduce the reimbursement below the level of Medicare:

90842	90843	90844
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In the Anesthesia section of Table A, all of the procedure code numbers were revised to the correct five-digit format, effective January 14, 2005. These codes are found in the range of 00100–01999.

The following six procedure codes were deleted, effective January 14, 2005, because they represent technical services only and therefore fall within the Clinical Laboratory Fee Schedule and not the Table A physician schedule:

86490	86580	89350
865810	86585	89360

The following nine procedure codes were deleted, effective January 14, 2005, because the services they describe now fall within the Clinical Laboratory Fee Schedule and not the Table A physician schedule:

99000	99017	99021
99001	99019	99026
99002	99020	99027

The following codes in the Radiology and Pathology sections were revised, effective January 14, 2005, to include a correct split between a professional and a technical component:

70010	73225	75710	76930	77750	88300
70015	73500	75743	76936	77761	88302
70030	73525	75746	76938	77763	88304
70170	73530	75774	76941	77777	88305
70190	73590	75790	76942	77778	88307
70332	73615	75801	76945	77781	88309
70336	73620	75803	76946	77782	88311
70350	73700	75805	76950	77783	88312
70360	73720	75807	76965	77784	88313
70370	74000	75809	76975	77789	88314
70371	74150	75810	76986	78460	88318
70373	74181	75820	77261	78472	88319
70390	74190	75825	77263	78478	88321
70450	74210	75880	77280	78481	88323
70540	74320	75885	77310	78483	88325
71010	74327	75893	77315	78580	88329
71036	74329	75961	77321	78647	88331
71040	74340	75962	77326	78650	88332
71060	74350	75980	77328	79000	88342
71100	74355	75984	77331	80500	88346
71250	74400	75992	77332	80502	88347
71550	74445	76000	77334	85060	88348
72010	74450	76010	77336	85097	88349
72125	74470	76061	77401	85102	88355
72141	74475	76066	77402	86077	88356
72170	74485	76070	77403	86078	88358
72192	74710	76075	77404	86079	88362
72196	74740	76080	77406	88104	88365
72200	74742	76086	77407	88106	89100
72240	74775	76090	77408	88107	89105
73000	75552	76093	77409	88108	89130
73010	75600	76095	77411	88125	89132
73040	75605	76150	77412	88160	89136
73050	75662	76350	77413	88161	89140

73085	75665	76355	77414	88162	89141
73090	75671	76360	77417	88172	
73120	75676	76370	77419	88173	
73200	75685	76400	77470	88180	
73220	75705	76506	77600	88182	

For the following five procedure codes, the conversion factor was corrected, effective January 14, 2005, for typographical errors in Table A:

99065	99116	99140
99100	99135	

Codes 43899 and 48599 were deleted, effective January 14, 2005, because they do not exist in the OMFS, and had been included by error.

Codes 35700 and 77416 were added, effective January 14, 2005, because they had been inadvertently omitted.

The amounts for codes 57307 and 88099 were revised, effective January 14, 2005, to correct typographical errors.

Changes in Table A effective May 14, 2005.

A second new Table A, incorporated by reference, was adopted as an emergency regulation for services rendered on or after May 14, 2005. This rulemaking adopts the Table A effective for services on or after May 14, 2005 on a permanent basis. This second Table A revises and corrects fees for nine of the medical procedures, and adjusts fees for 105 medical procedures so that they do not fall below Medicare in light of CMS' fee increases which became effective January 1, 2005 for those procedures.

The fees for the following procedure codes are revised, effective May 14, 2005, because of changes in CMS' physician fee schedule which became effective January 1, 2005:

11740	27601	28153	32940	61520	68850
19001	27665	28160	36420	61530	70553
20910	27686	28193	36489	61583	80502
20972	27730	28250	36493	61596	88180
21400	27732	28261	36533	61888	88349
21493	27752	28285	36860	63301	90842
21925	27824	28286	42100	64726	91032
24560	27825	28300	47505	65900	92265
25455	28050	28302	47553	67025	92284
25565	28060	28305	50020	67028	93721
25600	28080	28308	50205	67120	93722
25622	28100	28455	50578	67121	94770
26765	28104	28576	50961	67345	96115
27035	28108	28645	53200	67808	99183
27060	28110	31720	54318	67916	99311
27071	28120	31725	54450	67923	
27517	28126	32815	60512	68530	
27600	28140	32905	61340	68770	

The fees for the following nine procedure codes are revised, effective May 14, 2005, to include the 5% reduction which was inadvertently omitted in previous iterations of the Table A:

88028	88037	88140
88029	88045	88150
88036	88130	88155

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director has made an initial determination that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The entities directly affected by the regulations, which govern payments for medical services provided to injured workers after January 14, 2005, and on or after May 14, 2005, include: (1) health care providers, including but not limited to physicians, pharmacists, inpatient and outpatient facilities, who bill for procedures covered under the Official Medical Fee Schedule; (2) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (3) private insurance companies which are authorized to transact workers' compensation insurance in California. The representative private persons or directly affected businesses which might be negatively affected are insurance companies or self-insured employers. The possible cost impact would be slightly increased costs for treating some workers' compensation injuries.
- There will be no initial start-up costs to comply with the proposed regulation. The total annual ongoing costs will depend on the total number of medical procedures for which the fees are increased or decreased.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None. Minimal costs to state agencies in their capacity as employers, which will result from slightly increased costs of some medical services. These increased costs have been imposed by the enactment of SB 228 of 2003. .
- Mandate on Local Agencies: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulation will not have any adverse impacts on small businesses. The small businesses that will be affected by the regulation are medical providers. They will experience a small positive economic impact. The regulations also affect insurance companies and self-insured employers, which are the largest of California's employers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATION

A pre-adoption workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulations, because the issue addressed is not so complex that it cannot easily be reviewed during the comment period.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

In addition, this Notice, the Initial Statement of Reasons, and the text of regulations may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov under the heading "Rulemaking-proposed regulations." Any subsequent changes in regulation text and the Final Statement of Reasons will be available at that Internet site when made.

The Table A effective for services on or after January 14, 2005 (incorporated by reference into Section 9789.11(c)(2)) and the Table A effective for services on or after May 14, 2005 (incorporated by reference into Section 9789.11(c)(3)) are available for download or upon request as specified above.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulation to the DWC contact person:

Ms. Maureen Gray
Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may also be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on August 1, 2005. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Due to the inherent risks of non-delivery by facsimile transmission and email transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission or email transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF RULEMAKING FILE AND LOCATION WHERE RULEMAKING FILE MAY BE INSPECTED

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of

rulemaking proceedings to find the rulemaking link, "Workers' compensation—Official medical fee schedule table A.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Table A documents incorporated by reference, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Maureen Gray
Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

BACK-UP CONTACT PERSON / CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: Richard Starkeson, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulation as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulation is adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted on a permanent basis, the proposed regulation will remain in effect as amended at Title 8, California Code of Regulations, Section 9789.11.

TITLE 9. DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Adoption of Narcotic Treatment Program (NTP) Regulations Sections 10056 and 10057, Title 9, California Code of Regulations

NTP LICENSING FEES

NOTICE OF RULEMAKING AND PUBLIC COMMENT PERIOD

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs proposes to adopt new NTP regulations Sections 10056 and 10057, Title 9, California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 4, Division 4, Title 9, CCR, currently contains regulations for licensure of NTP programs, which provide replacement narcotic therapy to individuals, under medical supervision, to order to treat opiate addiction. This regulatory action amends Chapter 4 by adopting Sections 10056 and 10057, Chapter 4, Title 9, CCR.

Section 10056.

Section 10056 allows ADP to assess annual licensing fees for NTPs to cover the cost of licensing NTPs. The regulation:

- Establishes standards for computing and assessing annual license fees,
- Allows the ADP to increase licensing fees annually as needed to cover the cost of licensure; and
- Authorizes assessment of civil penalties for failure to pay annual licensing fees.

Because ADP has not increased licensing fees since 1994–95, licensing fees collected have not covered the Department's actual cost of licensing NTPs. Accordingly Section 10056 allows ADP to increase licensing fees to make up for this loss. To ease the burden on NTP providers, the cumulative amount of lost revenue has been prorated over the next three fiscal years, with one third of the cumulative total added to licensing fees for FY 2006–07, 2007–08, and 2008–09. Section 10056 includes computations showing how licensing fees will be increased, and how this prorated amount will be added to the annual licensing fee for FY 2006–07, 2007–08, and 2008–09.

Section 10057.

Section 10057 establishes standards for administrative review of licensing actions, including civil penalties assessed for failure to pay licensing fees. Section 10057 specifies how to request an administra-

tive review of licensing actions, and provides for both an informal level of appeal and a formal administrative review, in order to provide due process.

AUTHORITY

These regulations are being adopted pursuant to Sections 11755, 11835, and 11839.20 of the Health and Safety Code.

REFERENCE

The statutory references for this regulatory action are Sections 11839.3, 11839.5, 11839.7, 11839.10, and 11839.12 of the Health and Safety Code, and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

FISCAL IMPACT STATEMENTS

The Department does not anticipate any cost associated with implementation of these regulations because the regulations do not expand the scope of the implementing statutes. Any costs would be associated with implementation of the statutes rather than with implementation of the regulations themselves.

Costs or Savings in Federal Funding to the State: No costs or savings are anticipated.

Costs or Savings to Any State Agency: None. Workload will be absorbed using existing resources.

Costs or Savings to Any Local Agency or School District: No costs or savings are anticipated.

Nondiscretionary Costs or Savings Imposed on Local Agencies: This regulatory action will not result in any nondiscretionary costs or savings to local agencies.

Local Mandate Determination: The Department has determined that this regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Business: The Department does not anticipate any adverse economic impact on business because these regulations do not expand the scope of the implementing legislation.

The Department has made an initial determination that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses. This regulatory action will not affect the ability of California businesses to compete with businesses in other states. This regulatory action will not affect the creation or elimination of jobs, the

creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Effect on Small Businesses: The proposed regulatory action will affect small businesses because many NTP programs are small businesses as defined in Government Code Section 11342.610. The Department has determined that this regulatory action will result in no cost or savings to small businesses because the regulations do not expand the scope of the implementing statutes.

Effect on Housing Costs: This regulatory action will not affect housing costs in any way.

WRITTEN COMMENT PERIOD

Any interested person or his authorized representative may submit written comments on the proposed regulatory action. **The written comment period closes at 5 p.m. on August 1, 2005.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (915) 323-5873 or e-mail at MCONWAY@ADP.STATE.CA.US.

SCOPE OF TESTIMONY

Section 11346.8(c) of the Government Code prohibits the Department from making any changes to the text of a noticed regulation after the public hearing, unless the change was so sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action. Therefore please make your comments specific to the regulation discussed in this notice. Please indicate the number of the section you would like changed, the specific change requested, and the reason why you would like the section changed. Since the Department cannot make changes to sections of regulation which were not mentioned in this public notice, during the public comment period the Department will not consider testimony regarding changes which are outside the scope of this notice.

If you wish to request the Department to amend, adopt, or repeal additional sections of regulation, the Department is required to consider those changes in a separate regulatory action.

PUBLIC HEARING

The Department has not scheduled a public hearing on the proposed regulatory action. However, if any person wishes to submit oral comments, the Department will schedule a public hearing upon receipt of that person's written request. Such request must be

received at the address shown above no later than 15 days prior to the close of the written comment period.

CONSIDERATION OF ALTERNATIVES

Pursuant to Section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory action was taken. The Department must also determine that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. The Department will consider any alternatives presented during the public comment period.

ADDITIONAL CHANGES

The Department may modify the proposed regulation in response to testimony received during the 45-day public comment period, so long as any additional changes made are sufficiently related to the proposed regulatory action and within the scope of this notice. The Department will make available to any interested persons, for at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation, the full text of any regulation which is changed or modified from the express terms to this regulatory action. The Department will mail a copy of the additional changes to any person who testified or submitted comments during the public hearing (if one is requested), who submitted written comments during the 45-day public comment period, or who requested copies of additional changes. Please call the Department's regulations coordinator at (916) 327-4742 if you wish to receive a copy of any additional changes and you do not plan to present comments regarding the proposed regulatory action.

AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared and has available for review upon request the text of the proposed regulations discussed in this notice, written in plain English; an initial statement of reasons, explaining the necessity for each regulatory change; and all the information upon which the proposed regulations were based. To obtain a copy, please call Mary Conway at (916) 327-4742 or write to her at the address shown on the first page of this notice. If you received this public notice in the mail, the text of the proposed regulation and the initial statement of reasons were enclosed. The proposed regulations and initial statement of reasons are also available on the Department's web site at <http://www.adp.ca.gov>.

PERSON TO CONTACT FOR
ADDITIONAL INFORMATION

The Department's contact for this regulation package is Mary Conway, the Department's Regulations Coordinator, at (916) 327-4742. Virginia Clark, Manager of the Narcotic Treatment Program Licensing Branch, is the back up contact. Questions regarding the policy contained in the proposed regulatory action should be directed to Virginia Clark at (916) 327-3726.

FINAL STATEMENT OF REASONS

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, please call Mary Conway at (916) 327-4742. The final statement of reasons will also be posted on the Department's web site at <http://www.adp.ca.gov>.

**TITLE 10. DEPARTMENT
OF INSURANCE**

NOTICE OF PROPOSED ACTION AND NOTICE
OF PUBLIC HEARING REGARDING PROPOSED
AMENDMENTS TO SECTION 8 LIMITED
ASSIGNMENT DISTRIBUTION PROCEDURE

RH03026746

June 7, 2005

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi will hold a public hearing to consider the proposed amendments to Section 8 Limited Assignment Distribution Procedure under the California Automobile Assigned Risk Plan (CAARP) Plan of Operations.

AUTHORITY TO ADOPT RATES AND
PROCEDURES AND REFERENCE

The Commissioner will consider the proposed changes pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Government Code Section 11343(a) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed amendments at the following date, time, and place:

Date and Time: August 30, 2005
10:00 a.m.

Location: California Department of Insurance
45 Fremont Street
22nd Floor Hearing Room
San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed changes prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
mohre@insurance.ca.gov
Telephone: (415) 538-4112
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on August 30, 2005**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in

connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST

Currently the CAARP Plan of Operations allows insurers to enter into agreements whereby one insurer (servicing company) will write the assigned risk business of another insurer (buy-out company) for a fee. The purpose of the proposed amendments is to update the current LAD procedure to be consistent with the LAD procedures in the California Low Cost Automobile Insurance Program Plan of Operations. Although the Plan sets forth general eligibility requirements for a servicing company, it does not provide specific premium to surplus ratios or certain other criteria or conditions under which certain criteria may be waived. Also, it does not address a process to monitor continuing eligibility or capacity or set forth assignment procedures if the appointment of a servicing carrier is terminated. The proposed amendments will clarify the various procedures under LAD.

Changes to Section 8 B. Limited Assignment Distribution Procedure eligibility requirements are as follows;

- Once an insurer is appointed as a servicing company the insurer must continue to meet the service company requirements;
- If an insurer does not write 5% of the voluntary private passenger non-fleet car years in California but is a part of a group of insurers, the combined market share of the group may be used to meet the market share eligibility requirement;
- The surplus requirement has been increased from \$10,000,000 to \$25,000,000;
- The insurer will have to maintain a net premium to surplus ratio of 3 to 1;
- For three continuous years from the most current publication the insurer must have maintained a rating of A- or better from a recognized rating service with expertise in the insurance industry;

- The applicant must have been licensed and writing private passenger automobile insurance in California without restriction for at least three years;
- The Advisory Committee may consider a servicing company applicant that does not meet the market share requirement or the licensing and writing requirement. If the Advisory Committee approves such a servicing carrier it would then forward the recommendation to the Commissioner for approval;
- Eligibility criteria not subject to exception include the statutory capital and surplus requirement, the net premium to surplus ratio requirement, and maintenance of the required financial rating of A- or better from a recognized rating service with expertise in the insurance industry;
- Guidelines for Plan monitoring of service company eligibility and buy-out capacity and for terminating a LAD servicing company are specified in Sections 8.B.5 through 7;
- Companies with market shares greater than 5% may apply to the Advisory Committee and Commissioner for an exception to buy out as stated in Section 8.B.8;
- Section 8.B.15 provides guidance in situations where there is a conflict between the Plan of Operations and the buy-out company contract;
- Section 8.B has been updated editorially to be consistent, whenever possible, with the California Low Cost Automobile Program LAD procedure. New language has been introduced in Section 8.B12 allowing the buy-out company to transfer its Plan renewals upon expiration to the servicing company, provided the transfer is mutually agreed upon between the buy-out company and servicing company in the buy-out contract.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section

17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendment in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's rate application are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Departments web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, Initial Statement of Reasons, and proposed text is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

**TITLE 10. DEPARTMENT
OF INSURANCE**

**NOTICE OF PROPOSED ACTION AND NOTICE
OF PUBLIC HEARING REGARDING REVISIONS
TO CALIFORNIA AUTOMOBILE
ASSIGNED RISK PLAN**

RH04035204

June 7, 2005

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi will hold a public hearing to address the addition of an on line application submission system for commercial applications called the Electronic Application Submission Interface (EASi) under the California Automobile Assigned Risk Program (CAARP).

**AUTHORITY TO ADOPT RATES AND
PROCEDURES AND REFERENCE**

The Commissioner will consider the proposed addition pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Government Code Section 11343(a) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time: August 30, 2005
10:00 a.m.

Location: California Department of Insurance
45 Fremont Street
22nd Floor Hearing Room
San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

**WRITTEN AND/OR ORAL COMMENTS:
AGENCY CONTACT PERSON**

All persons are invited to submit written comments to the Insurance Commissioner on the proposed addition prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
mohre@insurance.ca.gov
Telephone: (415) 538-4112
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on August 30, 2005**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST

The purpose of the proposed change to the current regulation is to amend the Plan of Operations to allow producers certified by the Plan to submit commercial applications on-line. A new Availability of Forms, Manuals, Etc. subsection provides direction on the availability of Plan manuals, applications and other forms in both hardcopy and electronic format.

To coordinate with the introduction of EASi for commercial applications, several definitions shown in Definitions Part, Section 1 have been updated. The term "application" has been expanded to include electronic EASi application forms for private passenger and commercial Plan business. The definition of EASi has been expanded to include commercial risks, as well as private passenger risks.

EASi, introduced in Section 46.C3, offers immediate coverage and provides electronic transmittal of the commercial application to the Plan Office. In addition, operating procedures for the establishment of a future effective date, the retraction of an EASi reference number, the forwarding of a completed original application to the Plan, and the handling of violations of EASi procedures are provided.

The existing Electronic Effective Date procedure (EEDP) in Section 46.C.2 that offers immediate coverage by telephone is provided for informational purposes only.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendment in addition to the Informative Digest included in this

notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's rate application are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Departments web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, Initial Statement of Reasons, and proposed text is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

TITLE 10. DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

RH05044479

June 7, 2005

Proposed Revision to Rule 122 Hired and Nonowned Auto Coverage For Messenger/Courier Operations

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi will hold a public hearing to consider a change to Rule 122 of the Nonowned Auto Chapter of the California Automobile Assigned Risk Plan (CAARP) manual.

AUTHORITY TO ADOPT RATES AND PROCEDURES AND REFERENCE

The Commissioner will consider the proposed changes pursuant to the authority vested in him by California Insurance Code Sections 11620 and 11624. Government Code Section 11343(a) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time: August 30, 2005
10:00 a.m.

Location: California Department of Insurance
45 Fremont Street
22nd Floor Hearing Room
San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed

revision prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Elizabeth Mohr, Assistant Chief Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
MohrE@insurance.ca.gov
Telephone: (415) 538-4112
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on August 30, 2005**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1–2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST

California Insurance Code Section 1765.1 allows surplus line coverage with a non-admitted insurer as long as the non-admitted insurer has established its financial stability, reputation and integrity for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the Commissioner through a surplus line broker and placement on a list of eligible non-admitted insurers that is established by the Commissioner.

Rule 122, as it now is written allows employers of the messenger and couriers to purchase excess coverage for those drivers who possess primary insurance from a California admitted company. The proposed change will allow excess coverage when the primary coverage is provided by a California Department of Insurance approved non-admitted insurer under California Insurance Code Section 1765.1(f). The rule will also be amended to delete reference to Excess Coverage Only as the rule provides for the rating on an excess and primary basis

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, includ-

ing the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendment in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details of CAARP's rate application are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for

inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Departments web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, Initial Statement of Reasons, and proposed text is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

TITLE 14. DEPARTMENT OF CONSERVATION

CONVENIENCE ZONE EXEMPTIONS AND HANDLING FEES

TITLE 14. NATURAL RESOURCES DIVISION 2. DEPARTMENT OF CONSERVATION

CHAPTER 5. DIVISION OF RECYCLING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Recycling (Division) proposes to adopt amendments to the California Code of Regulations (CCR). Commencing with Subchapter 6, Chapter 5, Division 2, Title 14 of the CCR, the Division will propose permanent regulations, after the consideration of all comments, objections or recommendations. The proposed amendments are as follows:

SUBCHAPTER 6. RECYCLING CENTERS

Article 2. Handling Fees

§ 2516. Eligibility Criteria

Subsection 2516(a)(2): Amend the section to delete the prohibition for a recycler to collect handling fees for containers that were collected during the period that the convenience zone exemption review was in process. This amendment is necessary to allow a certified recycling center to be eligible for handling fees beginning the first whole month that the recycler is operational in a convenience zone, regardless of zone status.

INFORMATION IS AVAILABLE UPON REQUEST

Copies of the text, the express terms of the proposed action, the initial statement of reasons, and all of the information upon which this proposal is based are available upon request and at our website: www.conservation.ca.gov. The rulemaking file is available to the public for review during normal business hours at the Division of Recycling, 801 "K" Street, 19th Floor, Sacramento, California. Please contact the agency contact person, Marty Nold, at (916) 327-2761. General or substance questions regarding this file may also be directed to Marty Nold. The backup agency contact person for this rulemaking file is Cheryl Brown, who may be contacted at (916) 323-0728. Any technical inquiries shall be referred to the appropriate staff to ensure a prompt response.

SUBMITTING WRITTEN COMMENTS

The written comment period permits any interested person, or their authorized representative, to submit written comments addressing the proposed amendments to the Department. Written comments, which offer a recommendation and/or objection, or support the proposed amendment, should indicate the amended section to which the comment or comments are directed. Written comments should be sent to the Department and received before the close of the public comment period, no later than 5:00 p.m. on August 1, 2005. Additionally, we request that written comments reference a subsection or section of the proposed action. Written comments received by the Department after the close of the public comment period will not be responded to in the rulemaking file. Submit your written comments to: Marty Nold, Convenience Zone Exemptions and Handling Fees Permanent Regulations, Department of Conservation, Division of Recycling, 801 "K" St., MS 19-02, Sacramento, CA 95814. During the 45-day comment period, written comments may also be E-mailed to: DORRegulations@consrv.ca.gov, or faxed to (916) 327-8668.

PUBLIC HEARING

A public hearing has not been scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing, if one is held, the Department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with the changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the Department contact person identified in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The California Beverage Container Recycling and Litter Reduction Act (Chapter 1290, Statutes of 1986) was enacted in 1986 with a primary goal of providing consumers with convenient recycling opportunities for empty beverage containers. The Department has responsibility for the establishment and administration of the program. Convenience zones are designated by the Department to increase the geographical dispersal of locations where beverage containers can be redeemed. (§ 14571.1) In addition, the Department pays handling fees to recyclers as an incentive to establish operations in these zones, thereby enhancing consumer convenience to redeem empty beverage containers. (§ 14585) Unless excepted, a convenience zone is required to be served by a certified recycling center. (§ 14571)

A convenience zone with an operational recycling center is considered a "served" zone. If a zone is unserved, dealers within that zone are required to either (1) take empty beverage containers back in the store, or (2) pay \$100 per day in lieu of accepting and redeeming empty containers in-store. (§ 14571.6) Alternately, the Department may determine that a zone is exempt if it meets specified statutory criteria. (§ 14571.8) Designation of a zone as "exempt" relieves dealers within that zone of the responsibility of accepting and redeeming empty beverage containers.

The establishment of a recycling center in a previously exempt zone will result in the revocation of the exempt status of the zone. However, because the

review process of exempt zones is conducted on a quarterly basis, there may be a 60 to 90 day delay between the time a recycler becomes operational and the time the exemption is officially revoked.

Typically recyclers prefer to locate in convenience zones so that they may qualify for the increased revenue received from handling fee payments. However, eligibility requirements for handling fees specify that the recycler must be located in a convenience zone that was not exempt on the first day of the calendar month for which the handling fees are claimed. (CCR § 2516(a)(2)) Therefore, recyclers are not eligible for handling fees for containers collected during any month the recycler operated in an exempt zone.

Because there may be a 60 to 90 day delay to revoke the exempt status of a formerly exempt zone, some recyclers have expressed reluctance to locate in these zones due to the inability to qualify for handling fees for the first whole month of operation. This has resulted in hardship for newly certified recyclers, and proven problematic for the Department to encourage recyclers to locate in previously exempt zones. The Department proposes to amend current regulations to allow the payment of handling fees beginning the first whole month the recycler was operational in a convenience zone, regardless of zone status. This amendment will enhance recycler enthusiasm to locate in exempt zones, and advance a primary goal of the beverage container recycling program by increasing convenient recycling opportunities for consumers.

AUTHORITY

These regulations are submitted pursuant to the Department's authority under Public Resources Code Sections, 14530.5 (b) and 14536.

REFERENCE

Public Resources Code Sections, 14513.4, 14514.7, 14525.51, 14526.6, 14552, 14571.8, 14572, and 14585.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: The Department has determined that adoption of these proposed regulations will not impose any new mandates on local agencies or local school districts.

Cost or savings to any state agency: No savings or additional expenses to state agencies are identified because the implementation of statute is financed by the beverage container recycling program itself.

Costs to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The Department has determined that the adoption of these proposed

regulations does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies have been identified.

Costs or savings in federal funding to the State: No costs or savings in federal funding to the state have been identified.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Department has determined that no significant impact to California businesses will result from the adoption of this proposed regulatory language.

These proposed regulations serve to clarify and make specific existing statutory requirements.

Potential cost impact on private persons or directly affected businesses: Any cost impact that a representative private person or business may incur in reasonable compliance with the proposed action can be mitigated.

Creation or elimination of jobs in California: The Department has determined that the adoption of these regulations will not:

Create or eliminate jobs within California;

Create new nor eliminate existing businesses within California;

Expand businesses currently doing business in California.

Significant effect on housing costs: The Department has determined that the adoption of these regulations will have no significant effect on housing costs.

Effects on small businesses: The Department has determined that the adoption of these proposed regulations will not affect small businesses. These proposed regulations serve to clarify and make specific existing requirements contained in statute. These proposed regulations do not mandate actions upon private persons or businesses, but rather clarifies existing statutory mandates.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: www.conservation.ca.gov.

TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology Board is proposing to take the action described in the Informative Digest. No public hearing has been scheduled on the proposed action. However, any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on August 1, 2005. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code Section 2531.95 to implement, interpret or make specific Section 125.9 of the Business and Professions Code, the Board is considering changes to Division 13.4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Speech-Language Pathology and Audiology Board ("Board") is authorized by Business and Professions Code Section 125.9 to issue a licensee a

citation which may contain an order of abatement or an order to pay an administrative fine assessed by the Board. Pursuant to SB 362, Statutes of 2003, Section 125.9 of the Code was amended to authorize the issuance of an administrative fine of up to five thousand dollars (\$5000) where exceptional circumstances exist.

The Board is authorized by Business and Professions Code Section 2531.95 to adopt regulations necessary to implement the Speech-Language Pathology and Audiology Licensure Act.

The proposed amendment of Sections 1399.159 through 1399.159.3 deletes the reference to speech-language pathologists and audiologists and incorporates language to allow the Board to issue citation and fine to any individual licensed by the Board.

The proposed adoption of Section 1399.159.01 essentially establishes a process of office mediation equivalent to the Board's prior process of conducting an informal citation review conference. However, the office mediation would be held prior to the issuance of a citation and fine.

The proposed amendment of Section 1399.159.1 realigns the current regulatory language to reflect amendments to the governing statute. Specifically, it increases the maximum allowable fine from two thousand-five hundred dollars (\$2500) to five thousand dollars (\$5000) in situations where exceptional circumstances exist. It also outlines the criteria that should exist for issuance of the enhanced fine.

The repeal of Section 1399.159.4 eliminates the Board's informal citation review conference, as it becomes unnecessary with the implementation of the office mediation process through the adoption of Section 1399.159.01.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulatory action would not affect small businesses as it makes technical changes to the Board's current disciplinary guidelines.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Speech-Language Pathology and Audiology Board at 1422 Howe Avenue, Suite 3, Sacramento, CA 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Candace Raney, Board Analyst
Address: 1422 Howe Avenue, Suite 3
Sacramento, CA 95825
Telephone No.: (916) 263-2666
Fax No.: (916) 263-2668
E-Mail Address: Candace_Raney@dca.ca.gov

The backup contact person is:

Name: Annemarie Del Mugnaio,
Executive Officer
Address: 1422 Howe Avenue, Suite 3
Sacramento, CA 95825
Telephone No.: (916) 263-2666
Fax No.: (916) 263-2668
E-Mail Address: Annemarie_DelMugnaio@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.slpab.ca.gov.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED ACTION TO BUILDING STANDARDS OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT REGARDING THE 2001 CALIFORNIA BUILDING CODE (CBC) CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2 (DISABLED ACCESS TO MULTISTORY DWELLINGS)

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Department of Housing and Community Development (HCD) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 2. HCD is proposing building standards related to disabled access to multistory dwellings contained in the 2001 edition of the California Building Code (CBC).

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 17, 2005 until 5:00 p.m. on August 1, 2005. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, California 95833
Attention: Stanley T. Nishimura, Executive Director

Written comments may also be faxed to (916) 263-0959 or e-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Section 17921; and Government Code Sections 12955.1 and 12955.1.1. The Department is proposing this regulatory action based on Health and Safety Code Section 17921; and Government Code Section 12955.1.

INFORMATIVE DIGEST

Summary of Existing Laws

Existing laws govern accessibility requirements for persons with disabilities in specified dwelling units within covered multifamily buildings. However, existing state law exempts accessibility standards for multistory dwelling units (townhouse-type) in covered multifamily buildings without an elevator. Current federal law permits the exemption of accessibility requirements in townhouse-type dwellings constructed in covered multifamily buildings without an elevator.

Additionally, current state law requires the building department of every city and county to enforce regulations published in the California Building Standards Code, as well as other rules and regulations promulgated by HCD.

Further, Ch. 642, Stats. of 2003 (SB 1025) was signed in October, 2003 and became effective on January 1, 2004 although, by its own terms, the provisions of the law become operative on July 1,

2005. SB 1025 changes the definition of discrimination to include prescribed requirements relating to multistory dwelling units (townhouse-type) in buildings without an elevator that consist of at least four condominium dwelling units or at least three rental apartment dwelling units,

Summary of Existing Regulations

Existing regulations pertaining to this regulatory action are contained in the 2001 California Building Code (California Code of Regulations, Title 24, Part 2). The regulations being modified by this action are contained in Chapter 11A which governs "Housing Accessibility". Current regulations specifically exempt townhouse-type construction in covered multifamily buildings (those without elevators) from building standards for persons with disabilities. This is consistent with state and federal laws.

Additionally, emergency building standards adopted to implement the provisions of Ch. 642, Stats. of 2003 (SB 1025) were approved by the California Building Standards Commission and filed with the Secretary of State on May 19, 2005 to become effective on July 1, 2005.

Summary of Effect

This regulatory action makes some of the more critically needed updates to California standards pertaining to disabled access in specified residential dwellings. Specifically, this action will clarify the provisions of Ch. 642, Stats. of 2003 (SB 1025) to require that 10% of townhouse-type construction in covered multifamily buildings (those without elevators) is subject to building standards for persons with disabilities. These provisions apply only to the primary entry level of the unit. Because the provisions of Ch. 642, Stats. of 2003 (SB 1025) become effective on July 1, 2005, these regulations will clarify the requirements of the new law for the affected public as of that date.

NOTE: Because "Carriage units" are not defined in current building standards, but are exempted in both federal law and regulations (see Attachment A—Letter from U.S. Department of Housing and Urban Development), as well as state law by its cross-reference to these federal provisions. Therefore, a definition is proposed for inclusion within these amendments. This definition is necessary to clarify the scope of the proposed building standards and address inherent confusion between the terms "carriage unit" and "townhouse-type construction".

Comparable Federal Statutes or Regulations

The Fair Housing Amendments Act of 1988 (42 USC 3601, et seq.) contains comparable accessibility standards. Federal statutes and regulations (24 CFR Ch 1, Subchapter A, Appendix II) specifically exempt

townhouse-type construction in covered multifamily buildings (those without elevators) from building standards for persons with disabilities.

These proposed state building standards, as intended by Ch. 642, Stats. of 2003 (SB 1025), will exceed federal statutes and regulations by requiring that 10% of townhouse-type construction in covered multifamily buildings (those without elevators) in California is subject to building standards for persons with disabilities.

NOTE: "Carriage units" are exempted by both federal law and regulations (see Attachment A—Letter from U.S. Department of Housing and Urban Development).

POLICY STATEMENT OVERVIEW

The broad objective of these proposed regulations is to comply with the intent of Ch. 642, Stats. of 2003 (SB 1025) which revised Government Code Section 12955.1, and added Government Code Section 12955.1.1, as follows:

- This bill redefined "discrimination" to include accessibility requirements for certain types of townhouse-type construction in covered multifamily buildings—those without elevators. These types of buildings had previously been exempted from both state and federal laws from building standard design requirements for access for persons with disabilities. However, the bill did not provide clarity as to which buildings are subject to the new requirements nor the standards themselves.
- This bill did not include clear enforcement authority for these new provisions for local building officials, although these officials have the duty to enforce other provisions of federal and state laws governing disabled access provisions in building standards.
- The provisions of this bill are to become operative on July 1, 2005.

Therefore, the specific objectives of these proposed regulations are to:

- Specify exactly which buildings and dwelling units are affected by this new law;
- Clarify enforcement for local building officials;
- Ensure that the affected public is provided with adequate information needed to comply with the requirements of Ch. 642, Stats. of 2003 (SB 1025).

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

None.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts; and therefore, does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **YES**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

ESTIMATE: HCD believes that the additional expenditures will be minimal and will be able to be absorbed within existing budgets and resources.

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

HCD has made an initial determination that the proposed action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

HCD has determined there are minimal facts, evidence, documents, testimony, or other evidence upon which the agency relied to support its initial determination of no effect pursuant to Government Code Section 11346.5(a)(8). The public is welcome to submit any information, facts or documents either supporting HCD's initial determination or finding to the contrary.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

HCD has made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and has determined that a report pursuant to Government Code Section 11346.3(c) is not required.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

HCD has initially determined that a representative private person or business may be affected by these proposed regulations.

Estimate: The proposed regulatory changes have no cost impact beyond that imposed by the statute. The statutory change may impose costs on builders and developers involved with the construction of townhomes. The extent of these costs is dependent on the use and type of rooms or features which have been designed on the primary entry level of a townhouse. The cost of the statutory amendment is unknown because the application of the building code standards provides designers and builders specific requirements when designing and constructing townhouse-type dwellings in covered multifamily buildings without specifying particular methods of construction or materials. The regulations may mitigate costs by specifying the parameters of the statutory change.

Small Business Effect

This regulatory action may have an effect on small businesses as the standards contained in this proposal will require designers and builders to include design specifications and materials in buildings that are currently exempt.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

HCD has initially assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.

- The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will not affect the creation or the elimination of existing business within the State of California.

- The expansion of businesses currently doing business with the State of California.

These regulations will not affect the expansion of businesses currently doing business within the State of California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

HCD has initially determined that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

HCD must determine that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the

purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public review by contacting the person named below. This Notice, the Express Terms and Initial Statement of Reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding the procedural and administrative issues should be addressed to:

CBSC: Stan Nishimura, Executive Director

CBSC Back-up: If the contact person is unavailable, please contact Tom Morrison, Deputy Director, at the phone number or fax number provided below.

CBSC Address: California Building Standards
Commission
2525 Natomas Park Drive,
Suite 130
Sacramento, CA 95833

CBSC Phone No: (916) 263-0916

CBSC FAX No: (916) 263-0959

CBSC E-mail: CBSC@dgs.ca.gov

CBSC Website: <http://www.bsc.ca.gov>

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards may be addressed to:

Dave Walls, State Housing Law Manager
Department of Housing and
Community Development
Division of Codes and Standards
Telephone Number: (916) 445-9471
E-mail: dwalls@hcd.ca.gov
Fax: (916) 327-4712

**TITLE 25. DEPARTMENT OF
HOUSING AND
COMMUNITY DEVELOPMENT**

NOTICE OF PROPOSED RULEMAKING
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT
CALIFORNIA CODE OF REGULATIONS
TITLE 25, DIVISION 1,
CHAPTERS 1, 2, 2.2, 3, 4 and 5.5

NOTICE IS HEREBY GIVEN that the California Department of Housing and Community Development (HCD) proposes to amend existing regulations and adopt new regulations governing the fees assessed for its Mobilehome and Special Occupancy Parks, Manufactured Housing, Factory Built Housing, Occupational Licensing and Employee Housing Programs.

SECTIONS AFFECTED

HCD proposes to amend the following regulations found in Title 25, California Code of Regulations (Title 25, CCR):

Sections:

- 644 and 645 (Employee Housing (EH) Program);
- 1004.5, 1016, 1017, 1020.1, 1020.4, 1020.7, 1020.9, 1025, 1105, and 1611 (Mobilehome Parks (MP)); and
- 2004.5, 2016, 2017, 2020.4, 2020.7, 2020.9, 2105, and 2611 (Special Occupancy Parks (SOP) Program)
- 3060 (Factory Built Housing (FBH) Program)
- 4044 and 4884 (Mobilehome-Manufactured Housing (MH) Program)
- 5040 and 5360 (Manufactured Housing Sales, Occupational Licensing and Education (OL) Program)

PUBLIC HEARING

Public hearings have been scheduled at which time any interested party may present statements, orally or in writing, about this proposed regulatory action. Each hearing will be held as follows:

July 26, 2005
Ronald Reagan State Building
Auditorium
300 South Spring Street
Los Angeles, CA 95030
10:00 a.m.

August 3, 2005
HCD (Headquarters)
1800 3rd Street, Room 183/183
Sacramento, CA 95814
10:00 a.m.

Pre-hearing registration will be conducted on the day of the hearing. Those registered will be heard in order of their registration. Anyone else wishing to speak at the hearing will be afforded an opportunity after those registered have presented their testimony. The time allowed for each person to present oral testimony may be limited if a substantial number of people wish to speak.

Individuals presenting oral testimony are requested, but not required, to submit a written copy of their statements. The hearing(s) will be adjourned immediately following the completion of the oral testimony.

The public hearing facilities are accessible to persons with mobility impairments. If any special assistance is required (e.g., interpreter), please notify the contact person named in this notice at least 15 days prior to the public hearing.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to HCD. All written comments must be received at this office no later than 5:00 p.m. on August 3, 2005.

Written comments may be submitted by mail, e-mail, or fax, as follows:

By mail to:

Department of Housing and
Community Development
Division of Codes and Standards
P. O. Box 1407
Sacramento, CA 95812-1407
ATTN: Project Management Services
By e-mail to: feeregs@hcd.ca.gov
By FACSIMILE TO: (916) 327-4712

ATTN: Michelle Garcia

PERMANENT ADOPTION OF REGULATIONS

Following the public comment period, HCD may adopt the proposals substantially as described below or may modify the proposals if these modifications are sufficiently related to the original text. With the exception of minor technical or grammatical changes, the text of any modified proposal will be available for at least 15 days prior to its adoption from the contact person designated in this Notice. HCD will accept written comments on the modified regulations during the 15-day period.

AUTHORITY AND REFERENCE

Health and Safety code s 17003.5, 17020, 17036, 17040, 17050, 18015, 18020, 18031, 18052.6, 18153, 18300, 18502, 18502.5, 18551, 18552, 18605, 18610, 18613, 18613.4, 18613.5, 18613.7, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18870.3, 18871.3, 19990, 19991.3, and 50406 grant HCD the authority to adopt regulations governing the Employee

Housing, Mobilehome Parks, Special Occupancy Parks, Manufactured Housing, Factory Built Housing and Occupational Licensing Programs.

These regulations implement interpret, and make specific, Health and Safety Code s 17003.5, 17020, 17036, 17040, 17050, 18015, 18020, 18031, 18045.6, 18050, 18052.6, 18153, 18300, 18305, 18400, 18400.3, 18402, 18404, 18407, 18500, 18501, 18502, 18502.5, 18503, 18550, 18551, 18552, 18605, 18610, 18613, 18613.4, 18613.5, 18613.7, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18865.6, 18866.3, 18866.5, 18870, 18870.2, 18870.3, 18870.4, 18874.10, 18871.3, 18872, 19982, 19990, 19991.3, and 50406(f). 8 U.S.C. Sections 1621, 1641, and 1642.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws Employee Housing Program

HCD is authorized under the Employee Housing Act (EHA) commencing with Health and Safety Code (HSC) Section 17000 to operate the Employee Housing (EH) Program. The EHA mandates that HCD promulgate statewide preemptive regulations for the EH Program relating to the maintenance, use, and occupancy of "employee housing." Employee Housing, subject to the EH Program, is housing that accommodates five or more employees, or in certain circumstances, five or more farm workers in rural areas, as both are defined in HSC 17008. HCD is the enforcement agency under the EH Program unless a local government elects to assume enforcement responsibility pursuant to HSC 17050(b).

HSC Section 17041 authorizes HCD to establish a schedule of fees for the enforcement and administration of the EH Program.

Mobilehome Parks and Special Occupancy Parks Program

The Mobilehome Parks Act (MPA) commencing with HSC Section 18200 and the Special Occupancy Parks Act commencing with Section 18860 were enacted for the benefit of mobilehome and special occupancy park operators, residents and users to assure their health, safety and general welfare, to provide them with a decent living environment and to protect their investments in their manufactured homes, mobilehomes, multi-unit manufactured housing (MH-unit) and recreational vehicles.

The MPA (HSC Sections 18502(a) and 18613(f)) and SOPA (HSC 18870.4) authorize HCD to establish a schedule of fees for the administrative and enforcement of the Mobilehome and Special Occupancy Parks Programs.

Factory Built Housing Program

The California Factory-Built Housing (FBH) Law commencing with HSC Section 19960 governs the construction standards for factory-built homes and factory-built building components manufactured for sale or use within the State.

The FBH Law (HSC Section 19982) grants HCD authority to adopt regulations establishing a schedule of fees to pay for the administration and enforcement of the FBH Program.

Mobilehome-Manufactured Housing Program

The Mobilehome-Manufactured Housing Act (MHA) commencing with HSC Section 18000, was enacted to establish minimum design, construction and alteration standards for manufactured homes; multi-unit manufactured housing; commercial modulars and special purpose commercial modulars (cumulatively, "MH units"), sold offered for sale, rent, or lease within the State.

HSC Sections 18031 and 18613(f) grant HCD the authority to adopt regulations establishing a schedule of fees to pay for the administration and enforcement of the MHA.

Occupational Licensing Program

The Occupational Licensing (OL) Program, within the MHA, commencing with HSC Section 18045, assists with the enforcement of the MHA that govern licensing, escrows, and sales of MH units through required education, investigating complaints and illegal practices, and taking appropriate disciplinary action against those who violate the laws and regulations, including referrals to prosecutorial agencies.

The MHA (HSC Section 18031) provides HCD the authority to adopt fees commensurate with costs of enforcement and administration of the OL Program.

Summary of Existing Regulations Employee Housing Program

The Employee Housing (EH) Program regulations (Title 25, CCR, Division 1, Chapter 1) govern the construction, maintenance, use, and occupancy of privately-owned and operated employee housing facilities providing housing for five or more employees to assure their health, safety, and general welfare. HCD directly, or through local government enforcement agencies, inspects and issues permits for facility operation. Through the Office of the Mobilehome Ombudsman, HCD accepts requests for assistance and initiates investigations of complaints concerning health and safety violations within employee housing facilities.

Current regulation s 644(a) and 645(b) which establish assessed fees for reinspection and technical service, were last amended in 1982.

Mobilehome Parks and Special Occupancy Parks Program

The Mobilehome Parks (MP) (Title 25, CCR, Division 1, Chapter 2) and Special Occupancy Parks (SOP) (Title 25, CCR, Division 1, Chapter 2.2) Program governs the maintenance and occupancy of all privately owned mobilehome and special occupancy parks in the State, as well as the installation of manufactured homes and mobilehomes both in and outside of the parks. HCD directly or through local governments, inspects and issues permits for park operation

Current regulations which establish assessed fees for permitting, certification, inspection, investigation and other technical services, were last amended in 1988.

Factory-Built Housing Program

The Factory Built (FBH) Program (Title 25, CCR, Division 1, Chapter 3, Subchapter 2) regulations establish construction standards for factory-built homes and factory-built building components manufactured for sale or use within the State. Inspections are conducted and complying homes or components are issued an HCD Insignia of Approval.

Current regulations which establish assessed fees for plan checking, inspection and field technical service, certification, renewal, monitoring, alternate approval, were last amended in 1986.

Mobilehome-Manufactured Housing Program

The Mobilehome-Manufactured Housing (MH) Program (Title 25, CCR, Division 1, Chapter 3) regulations is to assist with the development and enforcement of preemptive federal and state regulations establishing minimum design, construction and alteration standards for manufactured homes; multi-unit manufactured housing; commercial modular units and special purpose commercial modular units sold, offered for sale, rented, or leased within the State. Inspections are conducted and HCD Insignias of Approval are issued to indicate compliance.

Current regulations which establish assessed fees for plan check, plan resubmission, plan supplement, inspection, manufacturer plant inspection or monitoring and technical services of mobilehomes-manufactured housing, commercial modular units, and special purpose commercial modular units, were last amended in 1989.

Occupational Licensing Program

The Occupational Licensing (OL) Program (Title 25, CCR, Division 1, Chapter 4) regulations govern the sale or lease of manufactured homes, mobilehomes, and/or commercial modular units, including the licensing of manufacturers, distributors, dealers, and salespersons. The program also performs

functions on behalf of the Mobilehome Ombudsman related to investigating and resolving consumer complaints pertaining to manufactured housing.

Additionally, 25 CCR 5814 requires HCD to verify applicability for alien licensing applications and allows for a fee to be assessed for reimbursement of the associated costs.

Current regulations which establish assessed fees for licensing, certification, investigative and technical service were last amended in 1989 and 1991.

Summary of Effects of Proposed Regulatory Action

This proposed regulatory action will realign HCD's current regulatory fees to meet its statutory requirement to reimburse actual program costs, to assure timely service and to expeditiously reduce its current inventory of pending health and safety service requests.

This regulatory action is based on information obtained through time and motion studies performed for every activity undertaken by HCD staff. The proposed fee amounts were derived by utilizing this information, along with the staffing and overhead costs associated with the specific activities. HCD has prepared and has available for public comment, the documentation results of its studies and calculations.

HCD has determined that implementing these proposed regulations will provide the regulated public timely monitoring, inspection, plan review and complaint response activities and reduce its current inventory

The proposed fee increases will also permit local enforcement agencies assuming jurisdiction for HCD programs, to increase the fees they are allowed to assess to enforce the provisions of these programs.

Comparable Federal Statutes or Regulations Employee Housing Program

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) repealed and replaced the Farm Labor Contractor Registration Act of 1963, as amended (29 C.F.R. § 500.0). The MSPA, as amended (29 U.S.C. § 1801 *et seq.*), safeguards most migrant and seasonal agricultural workers in their interactions with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing. The MSPA and its regulations are intended to supplement State law compliance with the MSPA and do not excuse individuals from compliance with appropriate State law or regulations (29 C.F.R. § 500.2). Under 29 CFR part 500.130(a) "Each person who owns or controls a facility or real property which is used as housing for any migrant agricultural worker must ensure that the facility complies with all substantive Federal and State safety and health standards applicable to such housing."

Under 29 CFR part 500.135 (a), any of these facilities or real properties used for migrant housing may not be occupied until they have been inspected and certified to meet these safety and health standards by a state or local health authority or other appropriate agency, including a federal agency. Under subdivision (b) of this part, once a facility or property is occupied, it must be supervised and continually maintained so as to ensure that it remains in compliance with the applicable safety and health standards.

Under 29 CFR part 500.132, the applicable federal housing standards are the standards promulgated by the Employment and Training Administration (at 20 C.F.R. § 654.404 et seq.) and the standards promulgated by the Occupational Safety and Health Administration (at 29 C.F.R. § 1910.142 et seq.). “Substantive safety and health standards include, but are not limited to those that provide fire prevention, and adequate and sanitary supply of water, plumbing maintenance, structurally sound construction of buildings, effective maintenance of those buildings, provision of adequate heat as weather conditions require, and reasonable protections for inhabitants from insects and rodents.” (29 C.F.R. § 500.113)

Manufactured Housing Program

Federal law and regulations (National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq.; 24 CFR, Parts 3280 and 3282) govern construction standards for manufactured housing built on or after June 15, 1976.

Mobilehome Parks, Special Occupancy Parks, Occupational Licensing Programs

No comparable federal laws governing these areas exist.

POLICY STATEMENT OVERVIEW

HCD is dedicated to providing prompt and effective services to all of its stakeholders. Through the implementation, administration and enforcement of its programs—Mobilehome and Special Occupancy Parks, Factory-Built Housing Program, Manufactured Housing, and Occupational Licensing—HCD strives to eliminate unreasonable backlogs of activity; ensure that those paying fees for services are charged just for those services (rather than also paying the costs attributable to those not complying with the laws’ requirements); and to ensure that health and safety requirements are addressed through both direct intervention and through monitoring and education of intermediary parties.

Current law (Health and Safety Code Sections 17936, 18031, 18502, 18502.5, 18503, 18870.3, 18870.4, and 19982) mandate HCD to set and adopt fees through regulations which reflect actual program costs. Current regulations (25 CCR Sections 644, 645, 1004.5, 1016, 1017, 1020.1, 1020.4, 1020.7, 1020.9, 1025, 1105, 1611, 2004.5, 2016, 2017, 2020.4, 2020.7, 2020.9, 2105, 2611, 3060, 4044, 4884, 5040, and 5360), however, were last amended in the late 1980’s and do not generate revenue sufficient to reimburse HCD for activities beyond responding to the most urgent health and safety requests. Consequently, HCD has, over approximately the past five years, accumulated an inventory of applications which impedes its goal to meet public expectations of expedient service.

SMALL BUSINESS IMPACT STATEMENT

Small businesses are affected by these regulations. The types of small businesses that may be affected by these regulations are: employee housing providers, farmers, mobilehome parks, special occupancy parks, and the businesses that provide services to park facilities; current and potential manufactured housing manufacturers, distributors and dealers.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE

Costs or savings to any state agencies: NONE

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE

Other nondiscretionary costs or savings imposed on local agencies: NONE.

Costs or savings in federal funding to the State: NONE.

Significant effect on housing costs: NONE. The proposed regulations will have an effect on the costs of manufactured housing and mobilehomes. The net effect is less than \$100.00 per new unit sold. This cost will be incurred by the increases in fees assessed for manufactured housing manufacturers, distributors, dealers and salespersons, who pass these costs through to the consumer. Additionally, homeowners wishing to change the structure of their homes or add accessory buildings, will incur increased costs associated with their building permits. Further, mobilehome and special occupancy park owners and operators may increase space rental costs, rather than absorb the increased costs for planning, permitting, and inspection services.

BUSINESS IMPACTS

HCD has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

The types of businesses that are likely to be affected by these regulations are employee housing providers, farmers, mobilehome parks, special occupancy parks, and businesses that provide services to the park facilities; current and potential manufactured housing manufacturers, distributors and dealers.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The proposed regulations will have a minimal cost effect on representative private persons and businesses. Businesses affected by these proposed regulations include current and prospective manufactured housing, mobilehome, commercial modular manufacturers, distributors, dealers and salespersons; employee housing providers, farms, mobilehome and special occupancy parks. These costs may either be absorbed by these businesses or passed through to the consumer (in the form of higher manufactured unit costs and higher space rental costs) or employee housing tenant. Additionally, individual homeowners wishing to change the structure of their homes or add accessory buildings to their mobilehomes or manufactured housing, will incur increased costs associated with their building permits.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

HCD has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in California, and will not result in the elimination of existing businesses nor create or expand businesses in California.

With the exception of certain manufactured housing and commercial modular manufacturers, the businesses affected by these proposed regulations are State-dependent—e.g., they are located on California properties: farms, mobilehome parks, special occupancy parks, or are businesses that sell to individuals wishing to place their manufactured houses or commercial modular units on California properties.

CONSIDERATION OF ALTERNATIVES

HCD must determine that no reasonable alternative that has been considered or that has otherwise been identified and brought to the attention of HCD would be more effective in carrying out the purpose for

which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

HCD has considered and implemented certain alternatives. For example, HCD has progressively reduced certain program services as an alternative to imposing higher fees on its clients. Now, however, these reductions have resulted in fewer services and a substantial inventory.

AVAILABILITY OF DOCUMENTS AND OR CONTACT PERSON

HCD has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from HCD at the following location or from the contact people listed below:

Department of Housing
and Community Development
Division of Codes and Standards
1800 3rd Street, Room 260
Sacramento, California 95814
Fax (916) 327-4712

In addition, this Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on HCD's website at the following address:

<http://www.hcd.ca.gov/codes>

CONTACT PERSONS

Questions regarding the regulatory process or clarification regarding the substance of this regulatory proposal may be directed to:

Ms. Michelle Garcia, Staff Services Manager
Department of Housing and
Community Development
Telephone: (916) 327-2798
Fax: (916) 327-4712
e-mail: feeregs@hcd.ca.gov

or

Ms. Rachel Hill, Associate Governmental
Program Manager
Department of Housing and
Community Development
Telephone: (916) 327-2656
Fax: (916) 327-4712
e-mail: feeregs@hcd.ca.gov

GENERAL PUBLIC INTEREST

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P. O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P. O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians &
Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P. O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

CESA CONSISTENCY DETERMINATION FOR Ma-le'l Dunes Restoration Project Humboldt County

The Department of Fish and Game ("Department") received notice on May 17, 2005 that the California Department of Corrections ("CDC") proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of various restoration activities on 160 acres of coastal dunes, forest, and estuary on the Mad River Slough in Humboldt County. The activities are a component of the Habitat Conservation Plan developed by CDC for its Statewide Electrified Fence Project.

The U.S. Fish and Wildlife Service, on May 9, 2005, issued a no jeopardy federal biological opinion (1-14-2005-2612) which considers the Federally and State endangered beach layia (*Layia carnosus*) and Humboldt Bay wallflower (*Erysimum menziesii* ssp. *eurekaense*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, CDC is requesting a determination on whether the federal biological opinion 1-14-2005-2612 is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, CDC will not be required to obtain an incidental take permit under CESA for the proposed project.

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION Fish and Game Code Section 2080.1 Tracking Number 2080-2005-011-BD

PROJECT: 2005-2008 State Water Project Delta
Facility Increased Diversion to Recover

Reduced Exports Taken to Benefit
Fisheries Resources Project ("500cfs
project")

LOCATION: Contra Costa County

NOTIFIER: Department of Water Resources

BACKGROUND

In the spring of 2000, the Department of Water Resources (DWR) proposed a two-year 500 cubic feet per second (cfs) diversion increase into the Clifton Court Forebay (CCF). The purpose of the increase was to allow greater export flexibility in order to recover water assets previously expended for reductions to benefit fish resources. On June 13, 2000, the Department of Fish and Game (DFG) issued Consistency Determination 2080-2000-026-3 on DWR's proposed project finding that the U.S. Fish and Wildlife Service's (USFWS) Operations Criteria and Plan (OCAP) Biological Opinion for the Central Valley Project (CVP) and State Water Project (SWP) and concomitant take authorization for delta smelt was sufficient to meet DFG's own requirements for incidental take under Fish and Game Code section 2080.1. On May 1, 2003, DFG received a written request from DWR seeking to extend the 500cfs project through 2003-2004. DFG granted the extension to DWR and issued a new Consistency Determination (2080-2003-010-BD) to cover the additional 500 cfs diversion through July 2005.

In a letter dated September 13, 2004 (#1-1-04-I-2285), the USFWS found that the extension of the 500cfs project was covered under the OCAP biological opinion (#1-1-04-F-0140) as to anticipated take of delta smelt (*Hypomesus transpacificus*). On April 21, 2005, DFG received a notice from Katherine F. Kelly of DWR requesting a determination pursuant to Fish and Game Code section 2080.1 that the USFWS biological opinion is consistent with CESA for extending implementation of the proposed project.

DETERMINATION

The project purpose is to continue to provide further protection for federal and state listed fish species by making voluntary cuts in exports during key periods and increasing diversions into CCF to enable the SWP to recover water supply impacts caused by these export reductions or other actions taken to benefit fishery resources. The proposed increased diversions will continue to provide an increment of supply from the Delta, reduce storage withdrawals from San Luis Reservoir and, under some circumstances may help avoid water quality concerns arising when San Luis Reservoir storage falls below a critical low point.

In previous requests for Consistency with the federal opinion DFG found that the project and mitigation measures set forth for delta smelt met the

conditions set forth in Fish and Game Code section 2081 (b) and (c) for authorization of incidental take of species protected under CESA. It further determined that the project was not likely to jeopardize delta smelt or result in destruction or adverse modification of the corresponding critical habitats if the measures described in that Opinion and project description are implemented. DFG agrees that extending 500cfs project activities fall within the scope of biological opinion #1-1-04-F-0140 and meets the conditions set forth in Fish and Game Code section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Some of the measures incorporated into the project description and described in the biological opinion require:

1. The increased diversion rate will not result in an increase in the annual water supply for the SWP. In addition, water obtained during the increased diversion period can only be used to offset reduced diversions that occurred or will occur because of ESA or other actions taken to benefit fisheries resources during the same calendar year.
2. Use of the increased SWP diversion rate will be in accordance with terms and provisions of existing Biological Opinions for SWP operations.
3. All three temporary agricultural barriers must be in place and operating when SWP diversions are increased. Increased diversions will only be made if the Clifton Court Forebay gates can be operated to Priorities 1, 2, and 3 and adverse impacts to local water users are avoided.
4. By April 1 of each year, DWR and Reclamation will develop an operations plan for the calendar year showing when and how much SWP exports would be reduced in the spring and fall and increased during the summer (between July 1 and September 30). The joint chairs of the CALFED Operations Group will review the plan at the next CALFED Operations Group meeting and make a decision as to whether to approve the plan or to ask the Water Operations Management Team (WOMT) for a decision on the plan. The WOMT will make the final decision on plan approval if the joint chairs of the CALFED Operations Group request them to do so. DWR and Reclamation will prepare monthly updates to the operation plan as necessary to be presented to the CALFED Operations Group meetings.
5. If the operations plan for the increased SWP diversion rate during the summer has been approved by either the joint chairs of the CALFED Operations Group or the WOMT, then the SWP may increase its diversions between July 1 and September 30 in accordance with the approved operations plan. The increased diversions would

not occur during any time that the “yellow light” in the USFWS Biological Opinion for delta smelt has been triggered or is in effect.

6. If the combined salvage of the delta smelt 14-day running average exceeds 200, either prior to the start of, or during any time which the SWP has increased its diversion rate between July 1 and September 30, the CALFED Data Assessment Team (DAT) will convene to assess the need to modify planned SWP Delta operations. If DAT does not concur that the use of the increased SWP diversion rate should be allowed to continue, then the issue will be elevated with the intent of reaching resolution as soon as possible. If the CALFED Operations Group cannot resolve the issue, it will be elevated to the WOMT. The WOMT will make the final decision as to whether the use of the SWP increased diversion rate should continue or be suspended.

Because the circumstances under which the prior consistency determinations were issued remain unchanged and the measures incorporated into the project description and biological opinion have been demonstrably implemented and will continue to be required during the four-year extension, DFG finds, pursuant to Section 2080.1 of the Fish and Game Code, that Biological Opinion #1-1-04-F-0140 is consistent with CESA and no incidental take authorization under CESA is required. Any substantive changes to the project as described in the biological opinion, including changes to the mitigation measures, will require DWR to obtain a new consistency determination or a CESA Incidental Take Permit from DFG. As the proposed project will not likely affect Sacramento River winter-run Chinook salmon, or Central Valley spring-run Chinook salmon, DFG makes no findings pursuant to these races of salmon.

DEPARTMENT OF HEALTH SERVICES

THE DEPARTMENT OF HEALTH SERVICES WILL START OPERATIONS OF HEALTH NET IN STANISLAUS COUNTY AS A MEDI-CAL MANAGED CARE PLAN WITHIN THE STATE PLAN

This notice is being given to provide information of public interest with respect to the inclusion in The State Plan the operation of Health Net in specified zip codes within Stanislaus County as a Medi-Cal Managed Care Plan. This change will not require any State regulatory updates. As described in this notice, the State Plan will be amended to reflect the following changes.

START OPERATIONS OF HEALTH NET IN STANISLAUS COUNTY AS A MEDI-CAL MANAGED CARE PLAN

The Department of Health Services (DHS) is amending the State Plan to include a description of how Health Net in Stanislaus County will exclude specified county zip codes, but still allow Medi-Cal beneficiaries a choice of a hospital within the Department of Managed Health Care (DMHC) access standard.

Health Net’s provider network in Stanislaus County is lacking a hospital within the DMHC’s hospital access standard of 15 miles. The PCP, Specialty and Ancillary networks are deemed adequate at this time. However, Health Net has been unable to obtain a contract with Emanuel Hospital in Turlock, which is inside the 15-mile standard for specified zip codes.

Health Net’s other hospital contracts consist of Doctor’s Medical Center in Modesto, Stanislaus Surgical Center in Modesto and Oak Valley Medical Center in Oakdale. The absence of the Emanuel contract results in Medi-Cal beneficiaries in Turlock, and several adjacent zip codes, to be outside the 15-mile access standard. Therefore, the following zip codes will be excluded from Health Net’s service area: 95313, 95316, 95360, 95380, 95381 and 95382. These zip codes will be included back into Health Net’s service area should a contract be executed with Emanuel Hospital.

Medi-Cal beneficiaries in the excluded zip codes will continue to be able to choose either Blue Cross (who have a contract with Emanuel) or the fee-for-service program. If a beneficiary in a mandatory aid code does not choose, they will be defaulted into Blue Cross and retain the option to disenroll from Blue Cross and enroll in the fee-for-service program.

PUBLIC REVIEW

The change discussed above is available for public review at the Department’s Medi-Cal Managed Care Division. In addition, you may obtain copies of this notice by writing to:

Andy Kingsbury
California Department of Health Services
Medi-Cal Managed Care Division
Policy and Contracts Section
MS 4415
PO Box 997413
Sacramento, CA 95899-7413

DEPARTMENT OF HEALTH SERVICES

THE DEPARTMENT OF HEALTH SERVICES TO ELIMINATE MEDI-CAL INTERIM BILLING CODES AND MODIFIERS FOR HEARING AIDS AND ADOPT NATIONAL HCPCS MODIFIERS

This notice is being given to provide information of public interest with respect to the billing codes and modifiers accepted by the Medi-Cal program, in compliance the Transactions and Code Sets Rule of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996. These proposed changes will be effective for dates of service on or after November 1, 2005.

It is the intent of the Department of Health Services to:

- Terminate interim codes and modifiers currently utilized to bill for specified hearing aids and services.
- Postage and handling for repairs during the warranty period will no longer be a benefit of the Medi-Cal program.
- Rentals of hearing aids will now be billed with the appropriate HCPCS code for the specific hearing aid. There is no change to the daily rental reimbursement.
- Require the use of national modifiers on all claims for purchase, rental and repair of hearing aids and accessories.

These proposed changes may impact the following provider categories: hospital outpatient departments and clinics, long-term care facilities, other outpatient clinics, pharmacies/pharmacists, physicians, respiratory care specialists, and providers of services under the California Children's Services/Genetically Handicapped Persons Program.

PUBLIC REVIEW

The specific changes noted above are available for public review at local county welfare offices throughout the State. Copies of this notice may be requested in writing to Kathleen Menda, Chief, Professional Provider Unit, Department of Health Services, 1501 Capitol Avenue, MS 4600, P.O. Box 997417, Sacramento, CA 95899-7417. This information may also be viewed on the Medi-Cal website at: www.medi-cal.ca.gov.

Written comments must be submitted within 45 days from the publication date of these changes in the California Administrative Notice Register as follows:

- E-mail: Medi-Cal Comment Forum at www.medi-cal.ca.gov. Submission instructions are provided on the website.

- Mail: P. O. Box 13811, Sacramento, CA 95853
- FAX: (916) 638-8976

All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate.

DEPARTMENT OF HEALTH SERVICES

THE DEPARTMENT OF HEALTH SERVICES TO ELIMINATE MEDI-CAL INTERIM BILLING CODES FOR RESPIRATORY CARE SERVICES AND ADOPT 2005 CURRENT PROCEDURAL TERMINOLOGY—4TH EDITION (CPT-4) CODES

This notice is being given to provide information of public interest with respect to the billing codes accepted by the Medi-Cal program, in compliance the Transactions and Code Sets Rule of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996. These proposed changes will be effective for dates of service on or after November 1, 2005.

It is the intent of the Department of Health Services to require claims for respiratory care services performed by Certified Respiratory Specialists (CRS) to be billed with CPT-4 codes 99202 and 99212. Interim codes Z4700 and Z4702 will be terminated. Reimbursement for these services will be at the current Medi-Cal rate for codes 99202 and 99212.

These proposed changes may impact the following provider categories:

Hospital outpatient departments and clinics, long-term care facilities, other outpatient clinics, pharmacies/pharmacists, physicians, respiratory care specialists, and providers of services under the California Children's Services/Genetically Handicapped Persons Program.

PUBLIC REVIEW

The changes discussed above are available for public review at local county welfare offices throughout the State. Copies of this notice may be requested in writing to Kathleen Menda, Chief, Professional Provider Unit, Department of Health Services, 1501 Capitol Avenue, MS 4600, P.O. Box 997417, Sacramento, CA 95899-7417. Billing codes and proposed reimbursement rates for respiratory care services may be viewed on the Medi-Cal website at: www.medi-cal.ca.gov.

Written comments must be submitted within 45 days from the publication date of these changes in the California Administrative Notice Register as follows:

- E-mail: Medi-Cal Comment Forum at www.medi-cal.ca.gov. Submission instructions are provided on the website.

- Mail: P. O. Box 13811, Sacramento, CA 95853
- FAX: (916) 638-8976

All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate.

DEPARTMENT OF HEALTH SERVICES

THE DEPARTMENT OF HEALTH SERVICES TO REPLACE SPECIFIED MEDI-CAL INTERIM MODIFIERS WITH HEALTHCARE COMMON PROCEDURE CODING SYSTEM (HCPCS) MODIFIERS

This notice is being given to provide information of public interest with respect to the billing codes accepted by the Medi-Cal program, in compliance the Transactions and Code Sets Rule of the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996. These proposed changes will be effective for dates of service on or after November 1, 2005.

It is the intent of the Department of Health Services to terminate interim Medi-Cal modifiers YQ, YS, ZK, ZU and ZV. HCPCS modifiers AG, AS, ET, GF, SA, SB and SC will be adopted by Medi-Cal.

These proposed changes may impact the following provider categories:

Hospital outpatient departments and clinics, long-term care facilities, other outpatient clinics, physicians, and providers of services under the California Children's Services/Genetically Handicapped Persons Program.

PUBLIC REVIEW

The changes discussed above are available for public review at local county welfare offices throughout the State. Copies of this notice may be requested in writing to Kathleen Menda, Chief, Professional Provider Unit, Department of Health Services, 1501 Capitol Avenue, MS 4600, P.O. Box 997417, Sacramento, CA 95899-7417. Billing codes and proposed reimbursement rates for respiratory care services may be viewed on the Medi-Cal website at: www.medi-cal.ca.gov.

Written comments must be submitted within 45 days from the publication date of these changes in the California Administrative Notice Register as follows:

- E-mail: Medi-Cal Comment Forum at www.medi-cal.ca.gov. Submission instructions are provided on the website.
- Mail: P. O. Box 13811, Sacramento, CA 95853
- FAX: (916) 638-8976

All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate.

DEPARTMENT OF HEALTH SERVICES

THE DEPARTMENT OF HEALTH SERVICES TO ADOPT 2005 CURRENT PROCEDURAL TERMINOLOGY—4TH EDITION (CPT-4) AND HEALTHCARE COMMON PROCEDURE CODING STRUCTURE (HCPCS) BILLING CODES FOR MEDI-CAL

This notice is being given to provide information of public interest with respect to the billing codes accepted by the Medi-Cal program, in compliance with the 2005 Healthcare Common Procedure Coding System (HCPCS) Update. These proposed changes will be effective for dates of service on or after November 1, 2005.

It is the intent of the Department of Health Services (DHS) to adopt the 2005 Current Procedural Terminology—4th Edition (CPT-4) and HCPCS Level II codes and modifiers.

- In compliance with Welfare & Institutions Code, sections 14105.21 and 14105.22, maximum reimbursement for new codes for orthotic and prosthetic appliances and clinical laboratory services, respectively, will be at 80% of 2005 Medicare rates.
- In compliance with Welfare & Institutions Code, section 14105.48, maximum reimbursement for new codes for durable medical equipment, except wheelchairs and related accessories, will be at 80% of 2005 Medicare rates. Reimbursement for new codes for wheelchairs and related accessories will be at 100% of 2005 Medicare rate.
- Maximum reimbursement for new billing codes for physician services will be 80% of the 2005 Medicare rate for the same item or service.

These proposed changes will impact the following provider categories:

Clinical laboratories, hospital outpatient departments and clinics, long-term care facilities, other outpatient clinics, acupuncturists, durable medical equipment and medical supply dealers, orthotists and prosthetists, pharmacies/pharmacists, physicians, podiatrists, dispensers of eye appliances and providers of services under the California Children's Services/Genetically Handicapped Persons Program.

PUBLIC REVIEW

The changes discussed above are available for public review at local county welfare offices throughout the State. Copies of this notice and the list of billing codes and reimbursement rates to be adopted under the 2005 HCPCS Update may be requested in writing to Kathleen Menda, Chief, Professional

Provider Unit, Department of Health Services, 1501 Capitol Avenue, MS 4600, P.O. Box 997417, Sacramento, CA 95899-7417.

Written comments must be submitted to the address above within 45 days from the publication date of these changes in the California Administrative Notice Register. All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate.

RULEMAKING PETITION DECISIONS

AIR RESOURCES BOARD

May 26, 2005

Mr. John R. Valencia
Wilke, Fleury, Hoffelt, Gould & Birney, LLP
Twenty-Second Floor
400 Capitol Mall
Sacramento, California 95814

Re: Petition for Repeal of Section 1962(c)(2)(D) of Title 13, California Code of Regulations

Dear Mr. Valencia:

On April 26, 2005, the California Air Resources Board (ARB or Board) received your letter entitled "Petition for Repeal of Section 1962(c)(2)(D) of Title 13, California Code of Regulations" (hereinafter the Petition). By this letter, I am advising you that ARB has denied the Petition.

As you are aware, Government Code section 11340.6 provides that "any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in [the California Administrative Procedure Act provisions on rulemakings]." Such a petition must "clearly and concisely" state: "the substance or nature of the regulation, amendment or repeal requested," "[t]he reason for the request," and "[r]eference to the authority of the state agency to take the action requested." (Gov. Code section 11340.6(a)-(c)).

The Board may delegate any duty it deems appropriate to its Executive Officer (Health and Safety Code section 39515(a)). Moreover, the Board is conclusively presumed to have delegated any of its powers to the Executive Officer unless it has expressly reserved that power to itself (Health & Safety Code section 39516.) The Board has not reserved the power to act on rulemaking petitions and it is therefore appropriate for me to deny the Petition pursuant to my delegated authority. The basis for my denial is set forth in this letter and its accompanying attachments.

THE REGULATORY PROVISION ADDRESSED BY THE PETITION

The Petition requests that ARB repeal a subsection of title 13, California Code of Regulations (CCR) section 1962, which is generally known as the California Zero Emission Vehicle (ZEV) regulation. I begin with a brief summary of some of the ZEV regulation's key elements. Section 1962(b)(1) requires that, starting in model year 2005, a specified minimum percentage of a vehicle manufacturer's California sales fleet of passenger cars and the lightest light-duty trucks must be ZEVs—vehicles with no emissions. The percentage ZEV requirement starts at 10 percent in model years 2005–2008 and 11 percent in model years 2009–2011; the percentage increases incrementally to 16 percent in the 2018 and subsequent model years. During model years 2007–2012, the heavier light-duty trucks delivered for sale in California are phased into the vehicle sales fleet subject to the percentage ZEV requirement. Before the ZEV regulation was amended in 2003, the percentage ZEV requirements started in the 2003 model year. Credits from earlier model-year vehicles may be used to help satisfy the requirements for model years 2005 and later.

A manufacturer may meet some or all of its percentage ZEV requirements with partial ZEV allowance vehicles called PZEVs, or with advanced technology PZEVs called AT PZEVs. The original provisions on these vehicles were added in ARB's 1998–99 rulemaking that established second generation low-emission vehicle standards (LEV II). A PZEV qualifies for a ZEV allowance of 0.2, meaning that allowances from five PZEVs would be equivalent to one ZEV. An AT PZEV qualifies for a ZEV allowance of greater than 0.2. For the 2005–2008 model years, a large volume manufacturer may meet up to 60 percent of its percentage ZEV obligation with allowances from PZEVs or AT PZEVs, and another 20 percent with allowances from AT PZEVs. After that time, credits from PZEVs are limited to six percent of the large-volume manufacturer's applicable passenger car and light-duty truck production volume, and AT PZEVs may be used to meet up to half the manufacturer's remaining percentage ZEV requirement. An intermediate volume manufacturer may meet its entire percentage ZEV obligation with PZEVs or AT PZEVs, and small volume manufacturers are not subject to the ZEV requirements. The ZEV regulation includes a number of mechanisms that substantially reduce the number of ZEVs needed to meet the percentage requirements in the earlier years of the program. In addition, PZEVs introduced before the 2006 model year qualify for special phase-in multipliers. (section 1962(c)(7).)

The Petition seeks the repeal of section 1962(c)(2)(D)—one of the four required criteria for a vehicle to be treated as a PZEV. To qualify as a PZEV, a vehicle must: [i] be certified to the 150,000 mile super-ultra-low-emission vehicle (SULEV) exhaust emission standards for passenger cars and light-duty trucks in section 1961(a)(1), [ii] be certified to the “zero” evaporative emission standards in section 1976(b)(1)(E), [iii] meet applicable on-board diagnostic system requirements in section 1968.1 for 150,000 miles, and [iv] be covered under the performance and defects warranty requirements specified in sections 2037(b)(2) and 2038(b)(2) for 15 years or 150,000 miles, whichever first occurs.¹ (13 CCR sections 1962(c)(A)–(D).) The Petition thus seeks to eliminate the extended warranty requirement for vehicles that qualify as PZEVs.

THE IMPACT OF THE PZEV EXTENDED WARRANTY REQUIREMENTS ON VEHICLE EMISSIONS

The Petition’s first basis for repeal is the claim there is no evidence the extended warranty requirements will decrease vehicle emissions. “During the proceedings related to the adoption of section 1962(c)(2)(D), the Board staff presented, and the Board itself considered, no evidence (emphasis in original), that requiring manufacturers to warrant the emission systems for 15 years or 150,000 miles will decrease vehicle emissions.” You maintain you were unable to identify any such evidence, or evidence to “support the efficacy of section 1962(c)(2)(D)’s extended warranty requirement” from either ARB’s response to your November 29, 2004 Public Records Act request or your review of ARB’s rulemaking file.

Citing a study by Air Improvement Resource, Inc. (the AIR Report), you also assert:

. . . [T]he Board did not even individually consider whether the extended warranty requirements actually affect vehicle emissions. Rather, the ARB grouped the extended warranty requirement, the high mileage testing limit, and increased durability into a “package” of items. This package may provide decreased vehicle emissions. However, the decrease in emissions is likely due to increased durability, rather than extended warranties. The ARB has no evidence to the contrary. Accordingly, this requirement is unnecessary and should be repealed.

(Emphasis in original)

Based on our review of documents relevant to the LEV II rulemaking, including the transcript of the public hearing and the initial and final statements of reasons for the rulemaking, I find that your claims are based on a false premise. While your reference to “increased durability” may be intended to focus on the requirement that PZEVs must demonstrate compliance with the SULEV standards over 150,000 rather than 120,000 miles, we believe that the extended warranty will also contribute to an increase in the durability of PZEVs. In other words, the emissions reductions associated with the extended warranty requirements are expected to come not just from additional repairs performed under the longer warranty, but also from the increased durability to which the warranty requirement will contribute. The Board could appropriately conclude that the longer 150,000 mile durability basis for certification testing to determine compliance with the SULEV standard, the 150,000 mile requirement for the OBD system, and the 15 year or 150,000-mile warranty will together induce manufacturers to produce more durable emission control systems that will reduce the emissions resulting from system deterioration as vehicles age.

Staff’s PZEV proposal in the LEV II rulemaking allowed certain SULEVs to qualify for partial ZEV allowances provided they complied with criteria designed to ensure they would exhibit and maintain emissions performance on the order of a battery-powered ZEV throughout their useful lives when emissions from upstream power generation for the ZEV is taken into account. Two of these criteria were directed towards certification demonstrations that the vehicles would comply with exhaust and evaporative emissions standards (13 CCR sections 1962(c)(2)(A) and (B)), and the other criteria were directed towards monitoring and notifying vehicle owners of emission control system defects (13 CCR section 1962(c)(2)(C)) and providing incentives for manufacturers to enhance the durability of emission control systems and for vehicle owners to timely repair their vehicles’ emissions-related defects (13 CCR section 1962(c)(2)(D)).

During the November 5, 1998 public hearing, the Board heard testimony regarding staff’s proposal for the extended warranty element of the PZEV provisions. Staff’s impetus in allowing manufacturers to certify PZEVs was to “promote the continued development and commercialization of high-performance, battery-powered electric and zero-emitting fuel cell vehicles while also encouraging advanced technology vehicles with the potential for extremely low-emission performance.” (Transcript of November 5, 1998 Public Hearing in the LEV II rulemaking, hereinafter “Transcript”, 27:13–19, Attachment A.) Staff explained that the extended

¹ The warranty time period is ten rather than fifteen years for a zero emission energy storage device used for traction power, such as the battery in a hybrid-electric vehicle. This shorter time period was added in the 2003 amendments to the ZEV regulation.

warranty requirements were not the sole criteria for qualifying a vehicle as a PZEV, but only constituted a subset of “a rigorous set of criteria that are predicated on SULEVs achieving the equivalent emissions performance of a ZEV.” (Transcript, 28:4–12. Emphasis supplied.)

Staff’s rationale was also set forth in the Staff Report: Initial Statement of Reasons (ISOR, pp. II-15 to II-22; Attachment B.) Staff recognized that although SULEVs could offer emission benefits compared to ultra-low-emissions vehicles (ULEVs), ZEVs still represented the “gold standard” of motor vehicle clean air technologies, because they do not utilize components with the potential to produce emissions, as opposed to “[v]ehicles with combustion engines [that will] invariably exhibit increased emission levels as the vehicle ages.” (ISOR, pp. II-15 to II-16.) Since staff’s PZEV proposal provides partial ZEV credits to SULEVs, and given that ZEVs do not emit or experience any deterioration of emissions, staff believed it was essential to propose criteria to ensure that qualifying SULEVs would closely maintain the near-zero emissions performance of ZEVs throughout their vehicle lives. (Transcript, 28:4–12)

It is also critical to recognize that staff’s PZEV proposal was not raised in a vacuum, but within the context of the same rulemaking proposing the adoption of SULEV standards and the associated primary (120,000 mile) and optional (150,000 mile) useful life standards. Staff proposed the optional 150,000 mile SULEV certification standard because ARB’s emissions inventory indicated emissions from vehicles that have accumulated between 100,000 and 150,000 miles “represent a significant portion of the emissions inventory.” (ISOR, p. II-10.) To address this source of emissions, staff proposed the following criteria for the optional 150,000 mile certification standard: (1) increasing the warranty provisions applicable to “high cost parts” from 7 years/70,000 miles to 8 years/100,000 miles, and (2) extending the high mileage in-use compliance testing requirements from 75,000 to 105,000 miles. (Ibid.) Manufacturers electing to certify SULEVs to this optional standard would obtain nonmethane organic gas (NMOG) credits because staff estimated vehicles certified to the optional standard would emit lower NMOG emissions than vehicles certified to the primary 120,000 mile standard. (ISOR, pp. II-10 to II-12.) Since a PZEV must be certified to the 150,000 mile SULEV exhaust emission standards (13 CCR section 1962(c)(2)(A)), the vehicle will incorporate and benefit from both the enhancements to the “high cost parts” warranty provisions and the high mileage in-use compliance testing requirements—criteria staff specifically proposed to address emissions consequences and found would produce NMOG emission benefits.

The extended warranty provision for PZEVs was never proposed as a “stand alone” criterion, but only as a subset of four criteria “predicated on SULEVs achieving the equivalent emissions performance of a ZEV.” (Transcript, 28:4–12.) ZEVs by definition emit zero exhaust emissions and will not experience any deterioration of the emissions control system. (13 CCR section 1962(a)). On the other hand, a vehicle certified as a SULEV can experience deterioration of the emissions control system and may exhibit increased emissions with continued operation or time. This concept was even raised by commenters at the public hearing. (Transcript, 232:6–17.) Staff was fully aware of these inherent differences between SULEVs and ZEVs, and therefore expressly conditioned a SULEV’s receipt of ZEV credits on its ability to comply with these criteria. Staff also incorporated the criteria for certifying a SULEV to the optional 150,000 mile certification standard into the PZEV proposal. As previously discussed, the emissions benefits resulting from the 150,000 mile certification standard criteria were outlined in the ISOR. The Board was therefore presented with ample evidence at the Hearing that the extended warranty requirements would, when coupled with the other three criteria in section 1962(c) and the criteria for certifying a SULEV to the optional 150,000 mile certification standard, provide assurance that PZEVs would exhibit and maintain their extremely low emissions performance over 15 years or 150,000 miles.

Both the ISOR and the Final Statement of Reasons (FSOR; Attachment C) for the LEV II and CAP 2000 Rulemaking (ISOR, pp. II-15 to II-17); (FSOR pp. 46–49) set forth staff’s belief that the extended warranty provisions would provide incentives for manufacturers to enhance the durability of their emission control systems and therefore serve to control SULEV emissions. Specifically, staff explained that the extended warranty applicable to PZEVs:

[is] directly tied to standards applying over extended periods, and [is] designed to assure that the manufacturer builds sufficiently systems that are durable for longer periods. The warranty for SULEVs is longer because the SULEV is providing partial ZEV credits that substitute for a ZEV that by definition will have no emissions during its lifetime.

Perhaps one of the more daunting issues associated with the smog check program is that lower-income owners of older vehicles are often overwhelmed by the repair costs of vehicles failing the test. An extended warranty would greatly assist this segment of the population and help avoid the associated emission increases from unrepaired vehicles.

(FSOR, pp. 46–47. Emphasis supplied.)

Staff acknowledged it could not quantify the contribution from warranties to emission control system durability, but stated it believed that economic realities indicated extended warranties provide incentives for automakers to manufacture more durable emission control systems. (ISOR p. II-63; FSOR, p. 48.)

In sum, the durability of an emission control system is an integral and essential factor that directly impacts the system's ability to control a vehicle or engine's emissions. The information outlined above relates the extended warranty requirements to increased emission control system durability, and it thus follows that the Board considered evidence and determined that the extended warranty provisions would reduce vehicle emissions that would otherwise result from less durable emission control systems.

The two instances in the approved amendments requiring that manufacturers receiving credit for vehicles certified to optional longer-life standards must provide emissions warranties for longer periods than are specified in statutes are necessary and appropriate in that they provide additional incentives to assure that these vehicles are especially durable . . . "

Resolution 98-53 (Attachment D, p. 6)

I also do not concur with your claim that neither ARB's response to your Public Records Act request² nor your subsequent review of the LEV II rulemaking file contained evidence that the extended warranty provisions will reduce vehicle emissions. As you are aware, to address the independent automotive repair industry's concerns regarding the effect of the extended warranty provisions on their operations, the Board directed staff to work with interested parties to investigate the extent to which the extended warranties would affect the industry and to report back to the Board within 18 months with its findings. (ISOR, pp.47-48; Resolution 98-53, p.8.) Pursuant to and in accordance with this directive, staff contracted with the RAND Corporation to conduct an investigation on this subject and to document its findings in a report. RAND's draft report, "The Impact of Longer Vehicle Emission Warranties on California's Independent Repair Shops," dated April 2003 (hereinafter "draft RAND Report", Attachment F), was provided to you

in response to your July 14, 2004 Public Records Act request. The draft RAND Report was subsequently revised and finalized in a final 2005 report of the same name—"The Impact of Extended Vehicle Emission Warranties on California's Independent Repair Shops" (Attachment G; Exhibit E to the Petition. This response will mostly cite to the final version of the RAND Report.

Section 2 of the final RAND Report, "Factors Influencing the Impact of Extended Emission Warranties and Recent Trends in Durability," examined changes in durability both unrelated and due to extended warranties. (Final RAND Report pp. 5-8.) While the report stated "[o]verall, it thus seems likely that durability of emission control systems will improve over time even absent extended emission warranties" (p. 7), it also acknowledged that the extended emission warranties could result in increased durability:

When faced with longer warranties, manufacturers may at one extreme leave the design of the emission-control system unchanged. In such a case, they would simply increase the price of new vehicles to cover the expected increase in warranty costs. *At the other extreme, manufacturers might redesign the system so that there is no increase in expected warranty expenditures. They may design the system with a greater margin for error, improve manufacturing quality so that fewer sub-par parts are used, or use parts that have longer lifetimes . . .* How manufacturers will respond to extended warranties depends on the relative costs of extra durability and warranty repairs (and their impact on profit) and on the impact of the various approaches on customer satisfaction and company reputation. There appear to be no empirical studies that examine the effects of extending vehicle warranties on durability.

(Emphasis supplied, final RAND Report, pp. 7-8)

The final RAND Report qualified these discussions because the data was insufficient to project "how durability will change over time if warranties are not extended or what the incremental effect of extending emission warranties would be." (p. 15.) While the final RAND Report therefore did not determine with mathematical certainty that extended warranties would result in increased emission control system durability, it stated that such increases were a distinct possibility.

The Petition also relies on the AIR Report (Exhibit B to the Petition) that concludes the Board only considered the extended warranty requirements, "high mileage testing limit, and increased durability as a 'package' of items." The Petition concedes that the "package" of requirements may decrease vehicle

² Although the Petition only mentions a Public Records Act request dated November 29, 2004, ARB's records indicate you also submitted a Public Records Act request dated July 14, 2004, requesting evidence or data "that identifies, projects or indicates the direct or indirect impact of extended emissions warranties." (Attachment E to this letter.) Among the documents produced by ARB in response to your July 14, 2004 request was the draft RAND Report "The Impact of Longer Vehicle Emission Warranties on California's Independent repair Shops; DRU-2750/1-CARB" dated April 2003. (Attachment F to this letter.)

emissions, but asserts any such decrease is “likely due to increased durability, rather than the extended warranties.”

Based on staff’s review of the AIR Report, I do not agree with the above claims. The AIR Report utilizes assumptions regarding SULEVs and PZEVs that do not fully account for the differences between these vehicle categories.

For instance, the AIR Report ignores the benefits resulting from the lower evaporative emission standards of PZEVs. In calculating the lifetime emissions from its “modeled” SULEV and PZEV, the study does not account for evaporative emissions because it states evaporative standard durability is the same for both SULEVs and PZEVs (150,000 miles) and since SULEVs and ZEVs are subjected to differing evaporative emission standards (0.5 g/day and 0.35 g/day, respectively), any differences are solely attributable to the standards.

Staff believes that not accounting for evaporative emissions is unsupportable. First, as exhaust emissions approach essentially background levels, evaporative emissions become an increasingly larger portion of total vehicle ROG emissions. Second, because true ZEVs emit no emissions, ARB should not issue partial ZEV credits to vehicles based solely on their exhaust emissions, especially when evaporative emissions are significant contributors to overall vehicle emissions. By failing to account for evaporative emissions in its analysis, the AIR Report appears to imply that such emissions are insignificant in relation to exhaust emissions, which is not consistent with staff’s experience. Furthermore, staff maintains that defects will be repaired in a more timely manner if those defects are covered under a warranty, than if no warranty exists. This position holds especially true with evaporative system defects because those defects will likely not affect vehicle driveability, and would not motivate the vehicle owner to seek repairs. Therefore, even though PZEVs and SULEVs share the same durability period for evaporative systems, when evaporative system failures occur beyond the normal warranty period, they are more likely to be repaired under the extended warranty, which produces additional emissions benefits.

It is true that staff proposed the extended warranty requirements in the context of a subset of the other criteria in section 1962(c)(2) and the SULEV 150,000 mile certification criteria. Staff was unable to quantify the effect of only the extended warranty requirement on emission control system durability (ISOR, p. II-63; FSOR, p. 48) and the final RAND Report acknowledged it was not aware of any empirical studies examining the effect of extended warranties on durability. (Final RAND Report, p. 8.) Against this absence of empirical data, both staff and the final

RAND Report reasoned based on their understanding of economic realities that the extended warranties would likely encourage vehicle manufacturers to produce more durable emission control systems. (ISOR, p. II-63; FSOR, p.48; final RAND Report, p. 7–8.)

Neither the Petition nor any of its exhibits incorporate, specify, or cite to empirical data supporting its assertion that any decrease in vehicle emissions is more likely due to increased durability, rather than the extended warranties. Even the AIR Report acknowledges this lack of data in summary finding 5.

To fully evaluate the emissions impact of extended warranties would require determining through owner surveys or other means, the difference in the number of emissions-related repairs (and the emissions impact of the repairs) for vehicles under warranty to those out of warranty. . . . When the final [CRC] report is released, this study may have information that is useful to answer this question. (AIR Report, p. 6)

Unlike the ISOR, FSOR and final RAND Report, the Petition does not provide the reasoning supporting its assertion, and also does not advance any argument that addresses staff’s and the RAND Report’s intuitive understanding that extended warranties would likely result in more durable systems. I am therefore unpersuaded by the Petition’s assertion that the extended warranties have no effect on vehicle emissions.

Cost Benefit Analysis

The Petition also relies on the AIR Report’s calculation that the incremental cost effectiveness of ARB’s “package” of additional requirements for PZEVs compared to the requirements for SULEVs is approximately \$90,000 per ton ROG + NOx. (AIR Report, p. 10.³) To derive this estimate, AIR “developed a version of the EMFAC 2002 model that allows us to model only a single vehicle technology over its lifetime. This version of the model was used to estimate lifetime emissions for both a SULEV and PZEV light duty vehicle, or passenger car.” (AIR Report, p.5.) However, none of the specifics of this model or the assumptions used in developing it were provided in either the AIR Report or the Petition, precluding staff from performing any meaningful review of the calculations or associated results.

In addition, the AIR Report’s cost-effectiveness calculation contains two flaws. First, it only utilized incremental differences in *exhaust* emissions, and omitted any differences in evaporative emissions between PZEVs and SULEVs. (AIR Report, p. 10.)

³ On April 26, 2005 you sent us an updated version of the AIR Report. (Attachment I to this response.) This response only cites to and responds to the updated AIR Report.

Staff's concern regarding this approach was expressed earlier in our discussion of the AIR Report's modeling of SULEVs and PZEVs. Secondly, the AIR Report assumes an extended warranty cost of \$100 per vehicle (*Ibid.*) In the Staff Report for the 2003 amendments to the ZEV amendments, staff estimated a PZEV would cost \$100 more than a SULEV. (Staff Report: Initial Statement of Reasons, 2003 Proposed Amendments to the California Zero Emission Vehicle Program Regulations (Attachment H), pp. 35–37.) This estimate included both hardware related and extended warranty related costs (*Ibid.*) Therefore, by fully attributing the \$100 incremental cost to the extended warranty, the AIR Report improperly inflates its cost-effectiveness calculation.

Staff's cost estimate for the entire LEV II rulemaking is fully explained and documented in the Initial Statement of Reasons (ISOR, II-54 to II-60; VI-1 to VI-3; VII-1 to VII-5; and attachments thereto.) Staff estimated the cost-effectiveness of the LEV II tailpipe and evaporative emissions proposal as \$1.48/lb ROG + NOx for SULEV passenger cars (ISOR VII-5, Table VII-6), which equates to \$ 2,960 per ton ROG + NOx. In 2001, staff reexamined its August 7, 2000 estimate in the Staff Report for the ZEV Biennial Review that PZEVs would cost \$500 more than a base SULEV, and revised it downwards to \$200 per vehicle (includes both hardware and warranty costs.) (Exhibit C to Petition, "ARB Staff Review of Report Entitled 'Impacts of Alternative ZEV Sales Mandates on California Motor Vehicle Emissions: A Comprehensive Study,' " dated October 31, 2001, p. 5) In 2003, staff examined seven gasoline powered PZEVs (Honda Accord, Toyota Camry, Nissan Sentra, Volkswagen Jetta, Volvo V70 and S60 FWD, Ford Focus and BMW 325) and further revised its estimate of the incremental cost of PZEVs over SULEVs to \$100 per vehicle. (Staff Report: Initial Statement of Reasons 2003 Proposed Amendments to the California Zero Emission Vehicle Program Regulations, (Attachment H), pp. 35–37.) Staff also calculated that the PZEV element of the amended ZEV regulation had a cost-effectiveness of \$44,444 per ton ROG + NOx. (*Ibid.*, pp. 50–51.)

The AIR Report interestingly does not respond to staff's statement "Based upon evaluation of recent warranty information provided to ARB, the less complex nature of the underlying technology, and the increased durability of emission control components used by PZEVs" (*Ibid.*, Emphasis supplied.)

The AIR Report does not provide sufficient information regarding its modeling of PZEVs or SULEVs, or the assumptions used in developing said models to allow any meaningful review, and also does not provide any rational basis for me to adopt its cost estimates as opposed to the cost estimates staff

prepared in 2003. I therefore do not concur with the cost effectiveness figure asserted in the Petition.

The Claim That Extended Warranties Could Increase Emissions

The Petition also claims the extended warranty provisions may cause increased emissions since "if vehicle owners know that repairs are under warranty, they may be less likely to take early precautionary steps to avoid harm to or the failure of their vehicles' emissions systems, because the increased costs of repairing the systems due to the owner's neglect will not be borne by the owner." The Petition does not support this claim with any survey data or other data.

This assertion was fully presented and addressed in the LEV II FSOR. The listed public comments included: "Deferred emissions maintenance will ultimately mean poor air quality. (Lynne Cardwell, Car Care Center)" (FSOR p. 46; Comment 33); "Based on past experience, there is no proof that emissions warranties provide car owners with incentives to obtain more timely maintenance of vehicles." (FSOR, p. 48, Comment 34); "ARB presumes that consumers will make repairs to defective emissions parts sooner if these parts are under warranty. This assumes the consumer understands what parts are warranted." (FSOR p. 52, Comment 39.)

Staff responded to each of these comments in the "Agency Response" portions of the FSOR, and I will not revisit or revise those responses here. Furthermore, these comments appear to overlook the fact that qualifying SULEVs must also incorporate an on-board diagnostic system that will notify the vehicle operator of emission control system malfunctions. (Title 13, CCR section 1962(c)(2)(C); "The vehicle manufacturer would also need to provide a 150,000 emission warranty such that all malfunctions identified by the vehicle's OBD II system would be repaired under warranty"; (ISOR, p. II-17.) A vehicle owner that sees an illuminated malfunction indicator light will have every incentive to repair malfunctions as soon as possible. "Since there would be no cost for repairs of the warranted parts, and the owner may be concerned about passing the periodic Smog Check test, it is intuitively the case that some number of motorists will have the repairs done sooner with the extended warranty." (FSOR p. 52, Agency Response to Comment 39.)

THE IMPACT OF THE EXTENDED WARRANTY REQUIREMENTS ON INDEPENDENT REPAIR FACILITIES AND PARTS MANUFACTURERS

The Petition's second basis for repeal is the claim the extended warranty requirements adversely affect automotive repair facilities and parts remanufacturers by diverting business to vehicle dealerships. The Petition cites a 2000 study by Thomas Penway

Research Group (the Penway Report) that concludes the extended warranty requirement would cause independent repair facilities to lose \$500 million between 2003 and 2008, nearly 2500 jobs, and result in 700 business closures. The report also estimates automotive parts dealers will lose \$134 million during the same time period.

The Penway Report's conclusions are not consistent with staff's findings. The report projects that the extended warranty provisions will "cost consumers an additional \$2200 to \$3200 per vehicle over and above the initial cost of the vehicle." (Penway Report, p. 38) In contrast, during the 2003 ZEV amendments rulemaking, staff estimated the additional per vehicle cost of a PZEV to be approximately \$100. (2003 ZEV Amendments ISOR, pp. 35-37.) In addition, the retail price for a Honda Accord LEV was \$22,860 and an Accord PZEV was \$23,010. There was essentially no difference in retail prices between the ULEV and PZEV versions of the Toyota Camry (*Ibid.*)

The Penway Report estimates that 31 independent repair shops will close and 100 jobs will be lost in the first year of vehicle life (Penway Report, p. 40), there will be a revenue loss of over \$131 million over the first three years due to a shift of repair work to dealerships (*id.* at 35), and a loss of \$5.4 million by parts dealers in the first year. (*id.* at 41.) These conclusions seem wholly unsupportable since all new passenger cars and light-duty trucks in California are covered by identical warranty provisions during the first 3 years/50,000 miles. (See final RAND Report, p. xii; "[e]xtended warranties will have no effect on independent repair shop revenue in California between 2003 and 2005 because warranties for the first three years or 50,000 miles of a PZEV's life remain the same as those on vehicles with standard emission warranties.") These estimates cast doubt on the validity of the Penway Report's model and suggest that it may unduly inflate the economic impact of extended warranties.

As previously discussed, the Board directed staff to work with interested parties to investigate the extent to which extended warranties would affect the independent automotive repair industry, and to report back to the Board within 18 months with its findings. (FSOR, pp. 47-48; Resolution 98-53, p.8) The April 2003 draft RAND Report was provided to Aaron Lowe of the Automotive Aftermarket Industry Association for comment.⁴ This draft report concluded that "[e]ven though revenue at independent repair shops will be lower with extended warranties than it would be if warranties were not extended, independent-repair-

shop revenue in California will grow between 2003 and 2020 with extended warranties." (Draft RAND Report, p. xii, emphasis supplied.) Mr. Lowe provided a response in June 2003, which included as an attachment the November 2000 Penway Report. ARB then contracted with RAND to reexamine its report in light of the Penway Report's criticisms and to issue a final report. The final RAND Report's conclusion is fully consistent with the draft RAND Report's conclusion (Final RAND Report, p. xiii) Staff has carefully read and considered both the draft and final versions of the RAND Report and the Penway Report, and believes the final RAND Report contains a more thorough, extensive, and well-reasoned analysis of this issue than the Penway Report. The Petition asserts the RAND study suffers from small sample size and "flawed assumptions and methodology," but fails to specify exactly what those assumptions or methodologies are, and why the sample size is inappropriate. Moreover, the final RAND Report's conclusions were reported to a 90-percent probability interval.

Using a base-case set of parameter values, the Final RAND Report estimates that the PZEV extended warranty requirements will reduce revenue at independent repair shops by 0.8 percent (\$120 million of \$15.4 billion) in 2010 and by 4.1 percent (\$730 million of \$17.9) billion in 2020 in maximum PZEV scenarios. (Final RAND Report, p. xii.) However, due to continuing increases in the number of vehicles and in average vehicle age, overall revenue at independent repair shops will still increase significantly between 2003 and 2020 even with extended warranties—the increase is estimated to be 30 percent with the extended warranties and 36 percent without them. (Final RAND Report, p. xiii.) In addition, the final RAND Report estimates that "extended warranties should not cause layoffs in the repair industry as a whole, although there may be layoffs at some independent repair shops," that "extended warranties will likely reduce profits of independent repair shop owners somewhat," and that "there will likely continue to be a large number of independent repair shops in most parts of the State." (Final RAND Report, pp. xv-xvi.)

In conclusion, the Petition does not present any information that significantly differs from the information presented to and considered by the Board at the November 5, 1998 Public Hearing, in the LEV II rulemaking record, or the 2003 rulemaking to amend the ZEV program regulations.

CONCLUSION

Based on the foregoing analysis, I find that your Petition has not demonstrated that the extended warranty provisions of title 13, CCR section 1962(c)(D) are inconsistent with the ARB's overall

⁴ Attachment J to this response sets forth a timeline for the development and publication of the draft and final RAND Reports.

statutory charge to improve air quality by controlling emissions from motor vehicles, or are not reasonably necessary to effectuate the purposes of our authorizing statutes.

The record upon which this denial is based includes the Petition and all of the material incorporated by reference in the Petition—Exhibits A through E and the Revised Exhibit B that was transmitted to ARB by a separate letter dated April 26, 2005 (Attachment I.) The record also includes this letter and all attachments hereto.

In accordance with Government Code section 11340.7(d), a copy of this letter is being transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register. You have cited the following as authority for the requested action: Health & Safety Code sections 39600 and 39601(a). The agency contact person on this matter is Paul Hughes, Manager, LEV Implementation Section at (626) 575-6977. Interested parties may obtain a copy of the Petition from Lori Andreoni, Clerk of the ARB, 1001 I Street, P.O. Box 2815, Sacramento, CA 95812, (916) 322-5594.

Sincerely,

Catherine Witherspoon
Executive Officer

Attachments

LIST OF ATTACHMENTS*

- Attachment A: Transcript of November 5, 1998 Public Hearing to Consider Amendments to the Proposed “LEV II” AND “CAP 2000” Amendments to the California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles <http://www.arb.ca.gov/board/ms/ms110598.htm>
- Attachment B: Staff Report: Initial Statement of Reasons; Proposed Amendments to California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles “LEV II” and Proposed Amendments to California Motor Vehicle Certification, Assembly-Line and In-Use Test Requirements “CAP 2000” <http://www.arb.ca.gov/regact/LEVii/isor.pdf>
- Attachment C: Final Statement of Reasons; “LEV II” and “CAP 2000” Amendments to the California Exhaust and Evaporative

Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles http://www.arb.ca.gov/regact/levii/to_oal/leviifso.pdf

- Attachment D: Resolution 98-83 <http://www.arb.ca.gov/regact/LEVii/res98-53.pdf>
- Attachment E: Public Records Act Request Pursuant to Government Code Section 6250 et seq. dated July 14, 2004.
- Attachment F: Draft RAND Report, “The Impact of Longer Vehicle Emission Warranties on California’s Independent Repair Shops,” DRU-2750/1-CARB, dated April 2003.
- Attachment G: Final RAND Report, “The Impact of Extended Vehicle Emission Warranties on California’s Independent Repair Shops,” TR-235, published 2005. <http://www.rand.org/publications/TR/TR235/>
- Attachment H: Staff Report, Initial Statement of Reasons, 2003 Proposed Amendments to the California Zero Emission Vehicle Program Regulations <http://www.arb.ca.gov/regact/zev2003/isor.pdf>
- Attachment I: Revised Exhibit “B” to Petition and Transmittal Letter
- Attachment J: Timeline for RAND Extended Emissions Warranty Report

* The majority of the attachments are available in electronic form on ARB’s Internet web site.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF CORRECTIONS**Minimum Standards for Local Detention Facilities**

The regulatory action deals with minimum standards for local detention facilities.

Title 15**California Code of Regulations**

AMEND: 1006, 1010, 1018, 1020, 1021, 1023, 1025, 1028, 1029, 1045, 1046, 1051, 1052, 1065, 1083, 1144, 1206, 1209, 1240, 1241, 1242, 1243, 1245, 1246, 1247, 1248, 1262, 1265, 1267, 1270, 1271 REPEAL: 1218

Filed 06/02/05

Effective 07/02/05

Agency Contact: Allison Ganter (916) 323-8617

BOARD OF EDUCATION**IMFRP—II/USP—HPSGP**

The regulatory action deals with the Instructional Materials Funding Requirement Program's expenditure policy percentages and 24 month purchasing requirement and the definition of "under review" which is used to determine which decile 1 to 3 schools are not subject to a textbook use and sufficiency review by a county superintendent of schools.

Title 5**California Code of Regulations**

ADOPT: 17101 AMEND: 9531

Filed 06/08/05

Effective 07/08/05

Agency Contact: Debra Strain (916) 319-0641

BOARD OF EQUALIZATION**Electronic Funds Transfer**

In this regulatory action, the Board of Equalization adopts "electronic funds transfer" provisions pertaining to the payment of a number of taxes and fees under the Board's jurisdiction.

Title 18**California Code of Regulations**

ADOPT: 1160, 1214, 1331.2, 1425, 2257, 2333, 2425, 2520, 3005, 3303, 3503, 4031.1, 4905

Filed 06/07/05

Effective 07/07/05

Agency Contact:

Joann Richmond (916) 322-1931

BOARD OF PRISON TERMS**Administrative Appeals**

This action is the Certificate of Compliance filing making permanent the prior emergency adoption of the Board's repeal of its internal administrative appeal system in order to comply with the Valdivia Remedial Plan Stipulated Order for Permanent Injunctive Relief. This action also adds procedures for grieving the denial by the Board of requested reasonable accommodation to an individual with a qualifying disability under the Americans with Disabilities Act. The prior

emergency filings related to this Certificate of Compliance filing are OAL file numbers 04-0405-03E, 04-0819-01EE, and 04-1222-03EE.

Title 15**California Code of Regulations**

ADOPT: 2251.5, 2251.6, 2251.7 AMEND: 2041, 2072, 2073, 2074 REPEAL: 2050, 2051, 2052, 2054, 2055, 2056, 2701

Filed 06/08/05

Effective 06/08/05

Agency Contact: Kelly Winsor (916) 324-9898

DEPARTMENT OF FOOD AND AGRICULTURE**South American Spongeplant Eradication Area**

This emergency filing proclaims Shasta County as an eradication area with respect to South American spongeplant.

Title 3**California Code of Regulations**

ADOPT: 3963

Filed 06/03/05

Effective 06/03/05

Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF HEALTH SERVICES**Medi-Cal Enrollment Process and Criteria**

This emergency regulatory action deals with the Medi-Cal Enrollment Process and Criteria. Pursuant to Welfare and Institutions Code section 14043.75 this regulatory action is a deemed emergency that is exempt from OAL review. This emergency regulatory action is effective on June 7, 2005 and will expire on October 6, 2005. The Certificate of Compliance for this regulatory action is due to OAL no later than October 5, 2005. (Prior OAL files 04-0922-02EP and 05-0119-02EFP; DHS File number R-04-04E.)

Title 22**California Code of Regulations**

ADOPT: 51000.10.1, 51000.15.1, 51000.20.9, 51000.31, 51000.51, 51000.52, 51000.53, 51000.60 AMEND: 51000.1, 51000.1.1, 51000.3, 51000.4, 51000.6, 51000.7, 51000.16, 51000.30, 51000.35, 51000.40, 51000.45, 51000.50, 51000.55, 51051, 51451

Filed 06/02/05

Effective 06/07/05

Agency Contact: Shelly Blanks (916) 650-6825

DEPARTMENT OF INSURANCE**Automobile Insurance Fraud Assessment**

This action updates the procedure for insurers to report data and pay the fee used in support of automobile insurance fraud prevention activities, as provided for in Insurance Code section 1872.8.

Title 10**California Code of Regulations**

AMEND: 2698.61, 2698.62

Filed 06/03/05
Effective 07/03/05
Agency Contact: Gene Woo (415) 538-4496

DEPARTMENT OF INSURANCE
Organized Automobile Insurance Fraud Interdiction Program

This regulatory action deals with the calculation and payment of the annual assessment fee paid by insurers that is distributed as grants by the Commissioner to district attorneys for the purpose of investigating and prosecuting organized automobile insurance fraud cases.

Title 10
California Code of Regulations
AMEND: 2698.70, 2698.71
Filed 06/03/05
Effective 07/03/05
Agency Contact: Gene Woo (415) 538-4496

DEPARTMENT OF THE YOUTH AUTHORITY
Collection of DNA Specimens

The Department proposes the first readoption of two emergency regulations that implement the DNA and Forensic Identification Database and Data Bank Act of 1998, as amended.

Title 15
California Code of Regulations
ADOPT: 4141, 4141.1
Filed 06/01/05
Effective 06/01/05
Agency Contact:
Kymberly Kaslar (916) 262-1390

DEPARTMENT OF TRANSPORTATION
Airport Fiscal Regulations

This action amends the Division of Aeronautics' procedures for financing general aviation airport construction, modernization, and security improvements through the California Aid to Airports Program (CAAP) and the California Airport Loan Program.

Title 21
California Code of Regulations
ADOPT: 4059, 4060, 4062.1, 4066, 4067, 4069, 4072.1 AMEND: 4050, 4052, 4055, 4056, 4057, 4058, 4061, 4062, 4063, 4064, 4070, 4071, 4072, 4073 REPEAL: 4065
Filed 06/03/05
Effective 07/03/05
Agency Contact: Betsy Eskridge (916) 654-5203

DIVISION OF WORKERS COMPENSATION
Workers' Compensation—Supplemental Job Displacement Benefit

This regulatory action is to implement Labor Code Sections 4658.1, 4658.5 and 4658.6, which establish

the Supplemental Job Displacement Benefit for injuries occurring on or after January 1, 2004.

Title 8
California Code of Regulations
ADOPT: 10133.50, 10133.51, 10133.52, 10133.53, 10133.54, 10133.55, 10133.56, 10133.57, 10133.58, 10133.59, 10133.60
Filed 06/06/05
Effective 08/01/05
Agency Contact:
Destie Overpeck (415) 703-4659

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN JANUARY 12, 2005
TO JUNE 8, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

05/31/05 ADOPT: 1859.300, 1859.301, 1859.302, 1859.310, 1859.311, 1859.312, 1859.313, 1859.314, 1859.315, 1859.316, 1859.317, 1859.318, 1859.319, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2 1859.324, 1859.325, 1859.326, 1859.327, 1859.328, 185
05/27/05 AMEND: 1859.2
05/27/05 AMEND: 20107
05/26/05 AMEND: 1859.2, 1859.81, 1866
05/26/05 ADOPT: 18465.1
05/24/05 ADOPT: 1859.23 AMEND: 1859.2, 1859.122, 1859.123, 1859.123.1
05/12/05 ADOPT: 1859.71.4, 1859.78.1 AMEND: 1859.2, 1859.73.2, 1859.79.2, 1859.82, 1859.83, 1859.125, 1859.125.1, 1859.145, 1859.163.1, 1859.164.2
05/03/05 ADOPT: 20800.1, 20800.2, 20800.3, 20800.4, 20800.5, 20800.6, 20800.7, 20800.8, 20800.9, 20801.1, 20801.2 20801.3 AMEND: 20800, 20801, 20802
05/02/05 ADOPT: 18640 AMEND: 18941.1, 18946, 18946.1, 18946.2, 18946.4
04/26/05 AMEND: 1859.2, 1859.42
04/19/05 AMEND: 172.4, 172.5, 172.6, 172.7, 172.8, 172.9, 172.10
03/21/05 AMEND: 549.70, 549.71, 549.72, 549.74
03/02/05 AMEND: 1859.73.2, 1859.145.1

02/28/05 AMEND: 1859.2
 02/28/05 AMEND: 1859.2
 02/28/05 AMEND: 1859.71.3, 1859.78.5
 02/24/05 AMEND: 211
 02/23/05 ADOPT: 1859.90.1 AMEND: 1859.2
 02/15/05 AMEND: 1859.81
 02/03/05 ADOPT: 1859.78.8 AMEND: 1859.2,
 1859.60, 1859.61, 1859.78.6
 02/03/05 AMEND: 1859.106
 01/31/05 AMEND: 1859.2, 1589.33, 1859.35,
 1859.77.3, 1859.82, 1859.83
 01/26/05 ADOPT: 20107

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06/03/05 ADOPT: 3963
 05/23/05 AMEND: 3636(a)(c)
 05/16/05 AMEND: 6388
 05/09/05 ADOPT: 1392.2(t), 1392.4(h), 1392.4(i),
 1392.4(j), 1392.9(c), 1392.9(d),
 04/15/05 AMEND: 1446.9(c), 1454.16(c)
 04/04/05 AMEND: 6400
 03/07/05 ADOPT: 1392.8.1(3) AMEND:
 1392.8.1.(2)
 03/01/05 ADOPT: 796, 796.1, 796.2, 796.3, 796.4,
 796.5, 796.6, 796.7, 796.8, 796.9
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 02/28/05 AMEND: 3430(b)
 02/24/05 AMEND: 1280.2
 02/23/05 AMEND: 3423(b)
 02/15/05 ADOPT: 4603(g)
 02/02/05 AMEND: 3430(b)
 01/21/05 ADOPT: 3700
 01/21/05 AMEND: 3700 (b)(c)
 01/14/05 AMEND: 3700(c)
 01/13/05 AMEND: 3962(a)

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05/26/05 ADOPT: 7030, 7031, 7032, 7033, 7034,
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 02/11/05 ADOPT: 7030, 7031, 7032, 7033, 7034,
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 02/04/05 AMEND: 1371
 01/28/05 ADOPT: 12270, 12271, 12272

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06/08/05 ADOPT: 17101 AMEND: 9531
 05/26/05 AMEND: 80413
 05/26/05 AMEND: 30060
 05/06/05 ADOPT: 18092.5 AMEND: 18066,
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 05/06/05 ADOPT: 3075.1, 13075.2, 13075.3,
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 05/06/05 ADOPT: 18220.2, 18224.2, 18224.4,
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 05/05/05 ADOPT: 80021, 80021.1
 04/14/05 AMEND: 19836
 03/24/05 ADOPT: 80307 AMEND: 80300, 80303,
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 03/21/05 AMEND: 19828.1
 03/02/05 AMEND: 55607, 59509 REPEAL: 55310
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 01/19/05 ADOPT: 19814.1, 19832, 19833, 19834,
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 05/31/05 ADOPT: 32032, 32033, 32034, 32035,
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 04/29/05 AMEND: 3456
 04/28/05 AMEND: 1637
 04/19/05 REPEAL: 16003
 04/14/05 AMEND: 8354, 8397.10, 8397.11,
 8397.12, 8397.13.
 04/06/05 AMEND: 230.2
 04/06/05 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9,
 9792.10, 9792.11 REPEAL: 9792.6
 03/16/05 AMEND: 344.30
 03/08/05 AMEND: 15220, 15220.1, 15220.3,
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 03/07/05 AMEND: 5144

02/28/05 ADOPT: 9767.1, 9767.2, 9767.3, 9767.4,
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02/04/05 AMEND: 5146

01/26/05 AMEND: 3456

01/26/05 AMEND: 5144

01/24/05 AMEND: 3427

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03/25/05 ADOPT: 13000, 13005, 13010, 13015,
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13045, 13050, 13055, 13060, 13065,
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01/25/05 AMEND: 9525

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06/03/05 AMEND: 2698.70, 2698.71

06/03/05 AMEND: 2698.61, 2698.62

05/05/05 ADOPT: 2805, 2805.5, 2805.9, 2805.11,
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03/25/05 AMEND: 1556

03/17/05 ADOPT: 2712 AMEND: 2835, 2840,
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02/09/05 AMEND: 260.165

01/14/05 AMEND: 2498.6

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05/09/05 ADOPT: 28.4

05/04/05 AMEND: 51.2

05/04/05 AMEND: 51.7

05/04/05 ADOPT: 51.25

05/04/05 ADOPT: 61.8

05/04/05 ADOPT: 51.23

05/03/05 AMEND: 51.14

05/03/05 AMEND: 51.15

05/03/05 AMEND: 51.24

05/03/05 AMEND: 51.12

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03/30/05 ADOPT: 2037, 2038 AMEND: 2010,
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03/15/05 ADOPT: 996

02/18/05 AMEND: 63.5

02/16/05 AMEND: 995.5

01/26/05 AMEND: 1080

01/19/05 ADOPT: 968.97, 968.99 AMEND:
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02/16/05 AMEND: 503(f)

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05/31/05 AMEND: 551.1, 551.6, 555, 558, 560,
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03/21/05 ADOPT: 2011 AMEND: 2180.1, 2181,
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03/10/05 AMEND: 2260, 2262, 2262.4, 2262.5,
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02/22/05 AMEND: 220.04, 220.12, 221.12

02/08/05 AMEND: 330.32

02/02/05 AMEND: 124.92, 124.93

01/31/05 AMEND: 1956.1, 1956.2, 1956.3, 1956.4

01/27/05 ADOPT: 2485

01/26/05 ADOPT: 15.07

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05/12/05 AMEND: 120.01

05/12/05 AMEND: 180.3

05/11/05 AMEND: 150.03

05/11/05 AMEND: 231

05/11/05 AMEND: 180.15

05/11/05 AMEND: 601

05/11/05 AMEND: 150.05

05/10/05 AMEND: 551

05/10/05 AMEND: 150.02

05/10/05 AMEND: 150

05/05/05 AMEND: 165

04/25/05 AMEND: 851.23

04/25/05 ADOPT: 18456.2.1, 18460.2.1 AMEND:
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04/22/05 AMEND: 149.1

04/19/05 AMEND: 670.2

04/13/05 AMEND: 2030, 2305, 2310, 2505, 2960

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04/07/05 ADOPT: 1.71 AMEND: 2.09, 2.10, 5.00
04/04/05 AMEND: 119900
03/30/05 AMEND: 825.03, 825.05, 826.01,
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03/30/05 AMEND: 852, 852.2, 852.3
03/28/05 ADOPT: 53.00, 53.01, 53.02, 53.03,
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03/14/05 AMEND: 150
03/08/05 AMEND: 29.05, 29.40, 30.00, 120.7,
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02/28/05 ADOPT: 125
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02/22/05 ADOPT: 1052.4 AMEND: 895.1, 1052,
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04/21/05 AMEND: 1398.38
04/14/05 AMEND: 1071, 1083
04/14/05 AMEND: 54.1, 54.2
04/14/05 AMEND: 1398.30

03/28/05 AMEND: 1399.688
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03/07/05 ADOPT: 1358.1
03/03/05 AMEND: 1399.500, 1399.501, 1399.502,
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03/01/05 AMEND: 1005
01/31/05 AMEND: 1319, 1319.4, 1321, 1322,
1326, 1328, 1329, 1351
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01/20/05 AMEND: 3008, 3031, 3041, 3042,
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05/02/05 ADOPT: 50243, 50245, 50247, 50249,
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04/04/05 AMEND: 93115
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90800.8, 90803
02/09/05 ADOPT: 93116, 93116.1, 93116.2,
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01/13/05 ADOPT: 1029.117, 1029.134, 1031.8,
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05/04/05 AMEND: 6001
04/29/05 ADOPT: 4056.1
04/07/05 AMEND: 1703
03/30/05 AMEND: 5041, 5073, 5076, 5082.2
03/18/05 AMEND: 27
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03/15/05 ADOPT: 20501, 20502, 20503, 20504, 20505
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 02/18/05 AMEND: 305.3
 02/17/05 AMEND: 1045
 02/16/05 AMEND: 1525.2
 02/15/05 AMEND: 1525.3
 02/08/05 AMEND: 1802
 01/28/05 AMEND: 25130, 25137
 01/13/05 AMEND: 1589
 01/13/05 AMEND: 1825
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05/26/05 AMEND: 3.11
 03/01/05 AMEND: 2703(d), 2705(b), 2705 (Emergency Release Follow-Up Notice Reporting Form Instructions)

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03/16/05 AMEND: 1601, 1602, 1603, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608
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 02/22/05 ADOPT: 2.3.1 AMEND: 1.1, 2.2, 2.3, 8.2, 14.5, 15, 17.1, 30, 31, 45, 47, 48, 51.1, 75, 77.2, 82, 86.2, 88
 01/31/05 AMEND: 1345, 1347, 1348

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06/03/05 ADOPT: 4059, 4060, 4062.1, 4066, 4067, 4069, 4072.1 AMEND: 4050, 4052, 4055, 4056, 4057, 4058, 4061, 4062, 4063, 4064, 4070, 4071, 4072, 4073 REPEAL: 4065

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06/02/05 ADOPT: 51000.10.1, 51000.15.1, 51000.20.9, 51000.31, 51000.51, 51000.52, 51000.53, 51000.60 AMEND: 51000.1, 51000.1.1, 51000.3, 51000.4, 51000.6, 51000.7, 51000.16, 51000.30, 51000.35, 51000.40, 51000.45, 51000.50, 51000.55, 51051, 51451
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 03/23/05 ADOPT: 50960.2, 50960.4, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.36, 50961, 50965 AMEND: 50962, 50963, 50964 REPEAL: 50960, 50961
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 03/14/05 AMEND: 926.3, 926.4, 926.5
 03/10/05 AMEND: 70217
 03/03/05 REPEAL: 12901
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 01/13/05 AMEND: 66262.34, 66264.145, 66266.103, 66268.7, 66268.34, 66270.60, 66271.33, 67391.1

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05/09/05 AMEND: 80044, 80045, 80066, 80070, 84063, 87344, 87345, 87566, 87570, 87571, 87725, 87725.12, 87844, 87866, 87870, 88069.7, 88070, 89119, 89182, 89244, 89245, 89370, 89566, 101200, 101201, 101217, 101221, 102391, 102392

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 05/17/05 AMEND: 645
 03/28/05 AMEND: 2611
 03/11/05 ADOPT: 3944.1
 02/08/05 ADOPT: 3939.12
 01/21/05 ADOPT: 3965

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 04/14/05 ADOPT: 7340, 7341, 7342, 7343, 7344, 7345, 7346, 7347
 04/07/05 AMEND: 6935, 6935.2
 02/02/05 ADOPT: 1338.1, 1443.1 AMEND: 1338

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02/03/05 AMEND: 1000

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04/22/05 AMEND: 42-101
 02/16/05 ADOPT: 31-503 AMEND: 31-206, 45-201
 01/25/05 AMEND: 63-300, 63-504

